The Significance of the Supreme Court's Ruling in Garcetti v. Ceballos

Before the Committee on Government Reform

U.S. House of Representatives

June 29, 2006

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I. INTRODUCTION

Beginning in 1968 with its landmark decision in *Pickering v. Board of Ed of Township High School District 205,* 391 U.S. 563 (1968), the Supreme Court's First Amendment cases have taken the approach of seeking a "balance between the interests of a government employee, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."

Beginning in the 1970s and continuing through the present, the federal and state legislatures and judiciaries have established numerous legal protections for whistleblowing employees in the government sector. In *Garcetti v. Ceballos*, 126 S. Ct. 1951 (May 30, 2006), the Supreme Court's majority opinion referred to "the powerful network of legislative enactments – such as whistle-blower protection laws and labor codes – available to those who seek to expose wrongdoing."

This memorandum discusses the ruling in *Garcetti v. Ceballos* in the context of the Supreme Court's prior First Amendment decisions, and in the context of other existing federal and state law protections for whistleblowing employees in the government sector that have developed over the last several decades.

II. THE RULING IN GARCETTI v. CEBALLOS IN THE CONTEXT OF PRIOR FIRST AMENDMENT DECISIONS

In *Pickering*, a school teacher was dismissed for publishing a letter in local newspaper that was critical of the school districts spending. In finding that the teacher's speech was protected by the First Amendment, the court took on the task of balancing "the interest of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State,

as an employer, in promoting the efficiency of the public services it performs through its employees." *Id.*, 391 U.S. at 596. The court determined that the interest of the school administration in limiting teachers' opportunities to contribute to public debate was not significantly greater than its interest in limiting a similar contribution by any member of the general public. The issue of how the school district used its funding was a matter of public concern about which teachers are likely to have informed opinions. *Id.* at 572. The court held that it was essential that teachers be allowed to speak out freely without fear of retaliatory dismissal. *Id.* As to the school's interest in limiting the teacher's speech, the court reasoned that the teacher was only tangentially and insubstantially involved in the subject matter of his letter. Accordingly, he was speaking as a citizen and not as a teacher and absent any knowingly or recklessly false statements in his publication, the letter could not serve as a basis for termination. *Id.* at 574.

The balancing test set forth in *Pickering* did not lay down a bright line rule that shields government employees in all instances. The court was careful to note that if the school board and the teacher had a closer working relationship, Pickering's statements might not be been protected if the statement jeopardized discipline or harmony in the workplace or if they "in any way either impeded...proper performance of his daily duties...or... interfered with the regular operation of the schools." *Id.* at 573.

First Amendment protection has not been limited to government employees who voiced their concerns publicly like in *Pickering*, but also has been extended to employees who communicate privately with their employer. In *Givhan v. Western Line Consol. School Dist.*, 439 U.S. 410 (1979), a teacher was dismissed for criticizing the School District's policies, which she thought to be racially discriminatory, in a private meeting with the school's principal. The

court held that the First Amendment does not distinguish between a public employee who arranges to communicate privately with his employer and one who spreads his view before the public. *Id.* at 416. However, the court recognized that statements made in public "may involve different considerations" when applying the *Pickering* balancing test. *Id.* at 415. Public statements generally require the court to look at the content of the speech and determine whether or not it impedes the government's interest in an efficient operation. However, "when a government employee personally confronts his immediate superior, the employing agency's institutional efficiency may be threatened not only by the content of the employee's message but also by the manner, time, and place in which it is delivered." *Id.*

In contrast, an employee's private speech was not protected in *Connick v. Meyers*, 461 U.S. 138 (1983), because the speech did not touch upon a matter of public concern and because it disrupted the activities of the employer. Myers was an Assistant District Attorney for over 5 years in the Parish of New Orleans. *Id.* at 140. When Myers learned that she was going to be transferred to a different section of the criminal court, she voiced strong opposition to her supervisor. She was later informed that despite her objections, she was still scheduled for transfer. Myers then drafted and distributed a questionnaire soliciting the views of her fellow staff members concerning office transfer policy, office morale, the need for a grievance committee, the level of confidence in supervisors, and whether employees felt pressured to work on political campaigns. *Id.* at 145. Myers was fired for refusing to accept the transfer and for the disruption caused by the questionnaire, which was considered an act of insubordination. *Id.* at 151. Applying the *Pickering* balancing test, the court found that the questionnaire, with the exception of the inquiry regarding the pressure to work on political campaigns, as a whole, did not raise matters of public concern. *Id.* at 154. Rather, the intent was to "gather ammunition for

another round of controversy with her supervisors," which the court viewed to be a matter of personal interest, rather than a matter of public concern. *Id.* at 148. The court stated that the Government as an employer has wide discretion and control over the management of its personnel and internal affairs. *Id.* at 152. Considering the manner, time, and place in which Myers delivered her questionnaire, the court gave deference to the District Attorney. *Id.*

In another decision regarding a private conversation, in *Rankin v. McPherson*, 483 U.S. 378 (1987), the court ruled in favor of an employee who made a comment regarding a presidential assassination attempt. McPherson was appointed as a deputy in the office of Constable of Harris County, Texas. At the time she was 19 years old and had attended college for a year, studying secretarial science. All employees of the Constable's office carried the title "deputy constable," regardless of their job function. *Id.* at 380. McPherson's duties were purely clerical in nature and she worked in a room to which the public did not have ready access. *Id.* Upon hearing a radio report describing the attempted assassination of President Reagan, McPherson engaged a co-worker in a brief conversation where she commented on the President's policies and said that "if they go for him again, I wish they get him." *Id.* at 381. Another employee heard this comment and immediately reported it to Constable Rankin who then summoned McPherson. McPherson admitted that she made the statement was fired by Rankin. *Id.* at 382.

The court held that the *Pickering* balance test weighed in favor of McPherson because the statement she made was on a matter of public concern, and McPherson's position was so utterly ministerial that the First Amendment interest in protecting her freedom of expression was not outweighed by any serious potential for disrupting the mission of the constable's office. *Id.* at 389. In finding that McPherson's speech was on a matter of public concern, the Court

considered the statement in the context in which it was delivered. The court found that the statement "on the heels of a news bulletin regarding what is certainly a matter of heightened public attention." *Id.* at 386. The inappropriate or controversial nature of the statement "is irrelevant to the question whether it deals with a matter of public concern." *Id.* at 387. In addressing the interest of the government to maintain efficient functioning of the public enterprise, the court found that the statement in no appreciable way affected the speaker's job performance, nor did it discredit the office because there was a low danger of her statement becoming public. *Id.* at 389. The court found that "[at] some point such concerns are so removed from the effective functioning of the public employer that they cannot prevail over the free speech rights of the public employee." *Id.* at 391.

Private communications within a government office were the subject of *Garcetti v. Ceballos.* Ceballos, a supervising district attorney, was contacted by a defense attorney in regard to inaccuracies in an affidavit that was used to obtain a critical search warrant in a criminal case. *Id* at 1955. Ceballos examined the affidavit and determined that it contained serious misrepresentations. Ceballos relayed his findings to his supervisors and followed up with a memo recommending dismissal of the case. *Id* at 1956. The case was pursued despite Ceballos' recommendations. At a hearing on a motion to challenge the search warrant, Ceballos testified for the defense. *Id.* Subsequently, Ceballos claimed that he was subjected to a series of retaliatory employment actions including being demoted, transferred to another courthouse and denied of a promotion. *Id.* Thereafter Ceballos filed a lawsuit for violation of his First Amendment rights.

While finding Ceballos' speech was unprotected, the majority opinion was carefully written to cite with approval the prior decisions in *Pickering, Connick, Givhan* and *Rankin.* The

Court's analysis took the familiar two-part *Pickering* approach. The court first asked whether Ceballos had spoken as a citizen on a matter of public concern.? If so, then the question would becomes whether the government had an adequate justification for treating the employee differently from any other member of the general public. *Id.* at 1958. The court noted that Ceballos' expression of his views inside his office, rather than publicly, was not dispositive of the issue. *Id.* at 1959. The court found that the controlling factor in this case was that Ceballos' expressions were made pursuant to his official duties as a calendar deputy because it was his job to prepare disposition memos. *Id.* at 1960. The court held that "[r]estricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen. It simply reflects the exercise of employer control over what the employer itself has commissioned or created." *Id.* Because the court found that Ceballos' speech was not protected under the First Amendment, the court did not discuss whether or not the government had a substantial interest in restricting his speech. The court did, however, remand the case to the Ninth Circuit to determine whether other speech by Ceballos (*e.g.* his testimony in the pending criminal case and speech at a bar association meeting concerning misconduct in the criminal case) was or was not within his official duties, and thus may constitute private citizen speech. *Id.* at 1962, 1971-1973.

Justice Souter's dissent articulated concern that government employers would be able to restrict their employee's rights by creating excessively broad job descriptions. *Id.* at 1961. Justice Kennedy's majority opinion responded that "[f]ormal job descriptions often bear little resemblance to the duties an employee actually is expected to perform, and the listing of a given task in an employee's written job description is neither necessary not sufficient to demonstrate

that conducting the task within the scope of the employee's professional duties for First Amendment purposes." *Id.*

In sum, *Garcetti v. Ceballos* does not reverse prior First Amendment precedents which protect government employee speech expressed outside and inside the workplace. The ruling applies only to speech which is clearly required as part of an employee's official job duties. In contrast, the employee speech in *Givhan* and *Rankin* was not required as part of their job duties, and therefore was protected by the First Amendment. Those cases were cited with approval in *Garcetti v. Ceballos*.

III. THE GARCETTI v. CEBALLOS RULING IN THE CONTEXT OF OTHER WHISTLEBLOWER PROTECTIONS FOR GOVERNMENT EMPLOYEES

The laws protecting whistleblowers in the government sector have evolved significantly over the last several decades.

Forty-eight state legislatures have enacted whistleblower protection statutes covering government employees.[1]

Congress enacted the Whistleblower Protection Act of 1989 to protect federal government employees who report waste, fraud and abuse.

Thirty-five federal statutes protect whistleblowing employees who raise concerns under those statutes, which may be available to government employees.[2]

The judiciaries of 45 states have recognized common law protections for whistleblowing employees, which may be available to government employees.[3]

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[1] *See* Appendix A, D. Westman and N. Modesitt, Whistleblowing: The Law of Retaliatory Discharge, Second Edition, (BNA Books 2004 & 2005 Supp.), attached hereto.
[2] *See id.*, Appendix C, attached hereto.
[3] *See id,* Appendix D, attached hereto..

The majority opinion in *Garcetti v. Ceballos* referred to "the powerful network of legislative enactments – such as whistle-blower protection laws and labor codes – available to those who seek to expose wrongdoing." Justice Souter's dissent referred to the state and federal whistleblower protections as a "patchwork" with provisions varying from state to state.

What is not a matter of opinion, however, is that Ceballos could have pursued whistleblower remedies under California law. Cal. Govt. Code Ann. § 8547.8 (West 2005); Cal. Lab. Code Ann. § 1102.5 (West Supp. 2006). It is not clear from the record in the *Garcetti v. Ceballos* case why Ceballos chose to pursue First Amendment remedies, rather than remedies under California whistleblower protection statutes. In any event, the Supreme Court's holding that Ceballos had no remedy under the First Amendment has no precedential effect with respect to any claims Ceballos may have under California law.

IV. CONCLUSION

The ruling in *Garcetti v. Ceballos* is consistent with prior Supreme Court precedents under the First Amendment, and does not reverse prior decisions which protect some forms of government employee speech within the workplace. The ruling also has no direct effect on the myriad whistleblower protections available under federal and state statutes, and under state common law.

APPENDIX A

STATE STATUTES PROTECTING PUBLIC SECTOR EMPLOYEES

This appendix summarizes the state statutes that protect whistleblowers employed in the public sector. Some of these statutes also protect employees in the private sector. Those statutes are also listed in Appendix B. The statutes listed in this appendix may be found in the BNA Labor Relations Reporter's Individual Rights Manual at Tabs 541 through 593.

State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
ALABAMA Ala. Code §36-26A-1 *et seq.* (2003)	State employees	Employee who reports a violation under oath or in the form of affidavit to a public body.	Violation of law, regulation, or rule of the state or political subdivision of the state.	Civil action within two years, relief including back wages, front wages, and compensatory damages.	N/A
ALASKA Alaska Stat. §39.90.100 *et seq.* (2003)	Employees of the state or local government	Employee or person acting on behalf of employee who reports or is about to report a violation to a public body; participates in a court action, investigation, hearing, or inquiry held by a public body. Employee must have reasonable belief and report in good faith.	Violation of any state, federal, or municipal law, regulation, ordinance; danger to public health and safety; gross mismanagement, substantial waste of funds or abuse of authority; a matter accepted for investigation by the office of the ombudsman; interference or failure to cooperate with an audit or other matter within the authority of the legislative budget and audit committee.	Civil action, relief including punitive damages; civil fine not to exceed $10,000.	Employer may require employee to give notice prior to initiating a report; however, the employee is not required to give prior notice if he/she reasonably believes it would not result in prompt action, the activity is already known to the employer, an emergency is involved, or he/she fears reprisal or discrimination if he or she gives notice.

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
ARIZONA Ariz. Rev. Stat. Ann. §38-531 *et seq.* (West 2003)	Employees of the state or local government, except employees of water and electrical municipal corporations	Employee who reports violation to a public body where employee has reasonable belief.	Violation of any law; mismanagement, a gross waste of monies, or an abuse of authority.	Administrative hearing before appropriate personnel board (not mandatory); relief including compensatory damages and attorneys' fees, costs, back pay, general and special damages, full reinstatement, and injunctive relief; violator receives appropriate disciplinary action including dismissal and civil penalty up to $5,000.	N/A
ARIZONA Ariz. Rev. Stat. Ann. §23-1501 (West 2003)	Public sector employees	Refusal to commit violation; disclosure, in a reasonable manner and with reasonable belief, that the employer has committed or will commit violation.	Act or omission that violates or will violate state constitution or statute.	Unspecified tort damages.	N/A
ARKANSAS Ark. Code Ann. §21-1-601 *et seq.* (Michie 2003)	Employees of the state or local government	Employee who reports in good faith to appropriate authority a violation or suspected violation; participates in government proceeding or inquiry; or objects to or refuses to participate in activity employee reasonably believes to be a violation.	Violation or suspected violation that is not of a merely technical or minimal nature of a state statute or regulation, of a political subdivision ordinance or regulation, or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer; waste of public funds, property, or manpower.	Civil action within 180 days of retaliation, relief including, but not limited to, fringe benefits, retirement service credit, compensation for lost wages, benefits, injunction to restrain continued violation, reinstatement to same or equivalent position, and reasonable court costs and attorneys' fees.	Employee must give employer reasonable notice of need to correct the waste or violation.

CALIFORNIA Cal. Gov't Code §8547 *et seq.* (Deering 2003)	Employees of state government or state universities	Employee who reports violation.	Violation of any state or federal law or regulation, fraud, abuse of authority, threat to public health, economically wasteful, gross misconduct, incompetence, or inefficiency.	Employee must file complaint in writing with employer or State Personnel Board with a sworn statement that the complaint is accurate; must file within 12 months of most recent act of reprisal complained of; Administrative hearing before State Personnel Board; violator receives fine not to exceed $10,000 and imprisonment in county jail not to exceed one year. Civil action after filing with State Personnel Board, relief including compensatory, punitive damages, and reasonable attorneys' fees.	N/A
Cal. Gov't. Code §§9149.20 *et. seq.* (Deering 2003)	Any individual appointed by the Governor or employed or holding office in a state agency	Employee who discloses improper governmental activities to a legislative committee. Not protected for disclosures of information prohibited by law.	Violation of any state or federal law or regulation; economically wasteful actions or actions involving gross misconduct, incompetency, or inefficiency.	Civil action, relief not specified.	N/A
Cal. Gov't. Code §53298(a) *et seq.* (Deering 2003)	Local government employees or applicants	Employee who files written complaint of a violation.	Gross mismanagement or significant waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.	Subject to fines, imprisonment, and a civil action for damages, including punitive damages.	N/A

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
Cal. Lab. Code §1102.5 *et seq.* (West 2003)	Public sector employees	Disclosure of violation to government or law enforcement agency where employee has reasonable cause to believe violation has occurred; refusal to participate in an activity that would result in a violation; participating in the protected conduct in any former employment.	Violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.	Civil penalty not to exceed $10,000 for each violation; unspecified damages.	N/A
COLORADO Colo. Rev. Stat. §§24-50.5-101 *et seq.* (2003)	State employees	Employee who discloses violation to any person or testifies about violation before any committee of the general assembly. Not protected if employee knows it to be false or discloses with disregard for the truth or falsity thereof.	Any action, policy, regulation, or practice, including waste of public funds, abuse of authority, or mismanagement.	Administrative hearing before State Personnel Board within 30 days of retaliation; appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit, and reimbursement for any cost, or attorneys' fees; violator receives mandatory minimum of one-week suspension or equivalent up to and including termination. In certain circumstances employee may bring civil action and may recover damages and costs as determined appropriate by the court.	Employees must make good-faith effort to provide information to supervisor, member of general assembly, or appointing authority before disclosure.

CONNECTICUT Conn. Gen. Stat. Ann. §§31-51m (West 2003)	Employees of the state and any political subdivision of the state	Employee who reports a violation or suspected violation of any state or federal law or regulation to a public body; or an employee that participates in an investigation, hearing, or inquiry held by a public body requesting the employee's participation, or a court action. Not protected if employee knows that the report is false.	Violation of any state or federal law, regulation, any municipal ordinance or regulation, unethical practices, mismanagement, or abuse of authority.	Civil action, within 90 days of exhausting all administrative remedies; relief including reinstatement, back pay, and reestablishment of employee benefits, costs, including reasonable attorneys' fees.	N/A
DELAWARE Del. Code Ann. tit. 29, §5115 (2003)	Employees of the state, school district, county or municipal government	Employee who reports a violation to elected official or Office of Auditor of Accounts. Not protected if employee knows the report is false.	Violation or suspected violation of local, state or federal law or regulation.	Civil action within 90 days, relief including injunction and actual damages.	N/A
DISTRICT OF COLUMBIA D.C. Code Ann. §1-615.51 *et seq.* (2003)	Former or current employees of District government and applicants	Employee who discloses violation, with reasonable belief, to a supervisor or a public body; refuses to comply with an illegal order.	Illegal order is a violation of federal, state, or local law, rule, or regulation; violation of a contract between the District government and District government contractor that is not merely technical or minimal nature; gross mismanagement; waste of public resources or funds; abuse of authority; a substantial and specific danger to the public health and safety.	Civil action within one year, relief including injunction, reinstatement, seniority rights, benefits, back pay and interest, compensatory damages, and reasonable costs and attorneys' fees. Violator subject to disciplinary action including dismissal and civil fine not to exceed $1,000.	N/A

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
FLORIDA Fla. Stat. Ann. §112.3187 *et seq.* (West 2003)	Employees of the state, regional, county, local, or municipal government, or employees of independent contractors engaged in any business or who have entered into a contract with a state agency	Employee who discloses to any agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act; however, for disclosures concerning a local government entity the information must be disclosed to a chief executive officer or other appropriate local official; employee participation in any inquiry conducted by a government agency; employee refusal to participate in any prohibited adverse action. Not protected if disclosure made in bad faith or for a wrongful purpose.	Any violation or suspected violation of any federal, state or local law, rule, or regulation that creates and presents a substantial and specific danger to the public's health, safety, or welfare; any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty.	Administrative hearing, complaint must be made within 60 days of retaliation. Civil action within 180 days after entry of final decision by the local governmental authority or termination of investigation, relief including reinstatement, compensatory damages for lost wages, benefits, or other remuneration, reasonable costs and attorneys' fees, issuance of an injunction, and temporary reinstatement is available pending final outcome of the complaint to all employees except municipal employees. A person who willfully and knowingly discloses records made confidential commits a misdemeanor of the first degree.	N/A
GEORGIA Ga. Code Ann. §45-1-4 (2003)	State employees, except employees of the office of the Governor, the judicial branch, and the legislative branch	Employee who reports a violation to employer. Not protected if employee knows that report was false or acted with willful disregard for its truth or falsity.	Fraud, waste, abuse in or relating to any state program and operation.	Civil action to have the retaliatory action set aside.	N/A

HAWAII Haw. Rev. Stat. Ann. §378-61 *et seq.* (Michie 2003)	Employees of the state or political subdivisions of the state	Employee who reports, or is about to report, to the employer or a public body; or an employee that is requested to participate in an investigation, hearing, or inquiry held by the requesting public body, or a court action. Not protected if employee knows report is false.	Violation or suspected violation of any federal, state, or local law, rule, ordinance, or regulation.	Civil action within two years of retaliation, relief including reinstatement, back pay, fringe benefits, seniority rights, injunctive relief, actual damages, attorneys' fees, and witness fees; the violator shall be fined not less than $500 nor more than $5,000 for each violation.	N/A
IDAHO Idaho Code §6-2101 *et seq.* (Michie 2003)	Employees of the state or political subdivisions of the state; employees of government entities who are eligible to participate in the public employees' retirement system	Employee who reports a violation in good faith to employer; participates in an investigation, hearing, court proceeding, legislative or other inquiry, or other administrative review; or objects to or refuses to carry out a directive that the employee reasonably believes to be a violation. Confidential communications not protected.	As to reporting: violation or suspected violation of a state or federal law, rule, or regulation, existence of waste of public funds, property, or manpower; as to refusing to participate: violation of a state or federal law, rule, or regulation.	Civil action with in 180 days of retaliation, relief including injunctive relief, reinstatement, full fringe benefits and seniority rights, lost wages, benefits, compensatory damages, court costs, and attorneys' fees; civil fine of not more than $500.	Such communications shall be made at a time and in a manner that gives the employer reasonable opportunity to correct the waste or violation.
ILLINOIS 20 Ill. Comp. Stat. §415/19c.1 (2003)	State employees	Employee who discloses a violation with reasonable belief; engages in any related activity.	Violation of law, rule, or regulation; mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety if the disclosure is not specifically prohibited by law.	None specified.	N/A

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
INDIANA Ind. Code Ann. §4-15-10-4 (West 2003)	State employees	Employee who reports a violation in writing, unless employee knows it is false.	Violation of federal law or regulation, state law or rule, or political subdivision ordinance; misuse of public resources.	Administrative appeal.	Employee must disclose to supervisor or appointing authority, unless that person committed violation, and give reasonable time to correct.
IOWA Iowa Code §70A.28 *et seq.* (2003)	State employees	Disclosure of a violation to member of General Assembly, any other public official or law enforcement agency where employee has reasonable belief.	Violation of law or rule, mismanagement, gross abuse of funds, abuse of authority, or substantial and specific danger to public health and safety.	Civil action, relief including reinstatement, with or without back pay, or any other equitable relief the court deems appropriate, including attorneys' fees; injunctive relief; violation of statute is a simple misdemeanor.	N/A
KANSAS Kan. Stat. Ann. §75-2973 (2003)	State employees	Employee who reports a violation to any person, agency, or organization, unless employee knows of falsity or recklessly disregards falsity; discussing operations of agency or other public concerns with members of legislature or auditing agency.	Violation of state or federal law, rules, or regulations.	Administrative hearing with the State Civil Service Board for classified employees within 90 days of alleged violation, violator may be suspended on leave without pay for not more than 30 days, or in the case of repeated violations may require termination and disqualification for state employment for 2 years; relief including costs and attorneys' fees. Civil action for unclassified employees within 90 days of violation, relief including costs and attorneys' fees.	Statute specifically prohibits any requirement of prior disclosure to supervisor.

KENTUCKY Ky. Rev. Stat. Ann. §61.101 *et seq.* (Banks-Baldwin 2003)	Employees of the state and political subdivisions of the state	Employee, or person acting on employee's behalf, who in good faith reports or is about to report a violation or suspected violation to judicial, legislative, or enforcement agencies; or who testifies in an official proceeding. Not protected if employee knows information is false or discloses with reckless disregard for its truth or falsity.	Violation of any local, state, or federal law, statute, executive order, administrative regulation, mandate, rule, or ordinance; or mismanagement, waste, fraud, abuse of authority, or endangerment of public health or safety.	Administrative hearing, remedies not specified. Civil action within 90 days of violation in addition to administrative remedies, relief including reinstatement, injunctive relief, and punitive damages.	Statute specifically prohibits any requirement of prior disclosure to supervisor.
LOUISIANA La. Rev. Stat. Ann. §42:1169 (West 2003)	Public employees	Employee who reports a violation to her agency head, the board, or a person or entity of competent authority or jurisdiction with reasonable belief.	Violations of any provisions of law within the jurisdiction of the board or any order, rule, or regulation, or any other acts of impropriety related to the scope or duties of public employment or public office.	Administrative hearing, relief including reinstatement, lost income and benefits for period of suspension, and compensatory damages.	N/A
La. Rev. Stat. Ann. §23:967 (West 2003)	Public employees	Employee who in good faith discloses or threatens to disclose, provides information or testifies before any public body, or objects or refuses to participate in an employment act or practice that is in violation of the law.	Violation of state law or of environmental law, rule, or regulation.	Civil action; relief includes compensatory damages, back pay, benefits, reinstatement, reasonable attorneys' fees, court costs.	Must first advise employer of the violation.

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
MAINE Me. Rev. Stat. Ann. tit. 26, §831 *et seq.* (West 2003)	Employees of the state, political subdivisions of the state, and school employees	Employee, or person acting on behalf of employee, who reports in good faith to the employer or public body with reasonable cause to believe; is requested by public body to participate in an investigation, hearing, or inquiry held by that public body, or in a court action; refuses to carry out a directive that would expose someone to a condition that would result in serious injury or death; is required to and does report suspected neglect, abuse, or exploitation.	Violation of federal or state law or rule; or a practice that would risk the health and safety of the employee or others; or an act or omission of a health care provider that constitutes a deviation from the applicable standard of care.	Administrative hearing before the Maine Human Rights Commission; remedies not specified. Violators may be subject to a fine of $10 for each day of willful violation.	Employee must first bring the violation to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable opportunity to correct that violation, condition, or practice. Prior notice to an employer is not required if the employee has specific reason to believe that reports to the employer will not result in promptly correcting the violation, condition, or practice.
MARYLAND Md. Code Ann., State Pers. & Pens. §5-301 *et seq.* (2003)	State employees in the executive branch	Employee discloses information with reasonable belief, disclosure of information protected by law may be made to only the Attorney General.	Violation of law; an abuse of authority, gross mismanagement, or gross waste of money; a substantial and specific danger to public health or safety.	Administrative hearing, complaint filed within six months of retaliation, relief including removal of detrimental information from personnel file, appropriate remedial action, reinstatement or promotion, back pay, grant leave or seniority, take appropriate disciplinary action, costs and attorneys' fees.	N/A

MASSACHUSETTS Mass. Gen. Laws Ann. ch. 149, §185 (2003)	Employees of the state or local government	Employee discloses or threatens to disclose a violation of the employer or another employer who the employee's employer has a business relationship with, to a supervisor or public body with reasonable belief; or provides information to, or testifies before, a public body; or objects to, or refuses to participate in, any activity, policy, or practice reasonably believed to be a violation.	Violation of a law, rule, or regulation, which the employee reasonably believes poses a risk to public health, safety, or the environment.	Civil action within two years of violation, all remedies available to common law tort actions, in addition the court may issue temporary restraining orders, temporary injunctive relief, reinstatement, benefits, trebled damages, reasonable attorneys' fees and costs.	Must first bring disclosure to the attention of a supervisor of the employee by written notice and afford the employer a reasonable opportunity to correct the activity. Not required to give opportunity to correct if he is reasonably certain that the policy is known to one or more supervisors of the employer and it is emergency in nature, the employee reasonably fears physical harm as a result of the disclosure, or makes the disclosure to a public body for purpose of providing evidence of a crime.
MICHIGAN Mich. Comp. Laws Ann. §15.361 *et seq.* (West 2003)	Employees of the state or political subdivisions of the state, except state classified civil service employees	Employee reports or is about to report to a public body, unless the employee knows that the report is false; is requested by public body to participate in investigation, hearing, or inquiry of that public body, or a court action; employee must show by clear and convincing evidence that he was about to report.	Violation or suspected violation of a federal, state, or local law, regulation, or rule.	Civil action, within 90 days of the retaliation, relief including reinstatement, back pay, reinstatement of fringe benefits, seniority rights, injunctive relief, actual damages, and attorneys' fees; violator shall be liable for civil fine not more than $500.	N/A

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
MINNESOTA Minn. Stat. Ann. §181.931 *et seq.* (West 2003)	Employees of the state and political subdivisions of the state	Employee reports in good faith; is requested by a public body to participate in an investigation, hearing, or inquiry by a public body; refuses order to perform action employee reasonably believes to be a violation; not protected if employee makes statements knowing that they are false or in reckless disregard of the truth.	Violation or suspected violation of any federal or state law or rule; situation in which the quality of health care services violates a known standard and potentially places the public at risk of harm.	Civil action to recover any and all damages recoverable at law, costs and disbursements, including reasonable attorneys' fees, and may receive injunctive and other equitable relief.	N/A
MISSISSIPPI Miss. Code. Ann. §25-9-171 *et seq.* (2003)	Employees of the state or local government	Employee reports or provides information in good faith to a state investigative body, including Attorney General, State Auditor, and Ethics Committee. Not protected if employee knowingly and intentionally provides false information to a state investigative body.	Violation of any federal or state law or regulation; or is an abuse of authority, results in substantial abuse, misuse, destruction, waste, or loss of public funds or public recourse; a substantial and specific danger to the public health or safety; or discrimination based on race or gender.	Administrative hearing, damages including back pay and reinstatement, injunctive relief, compensatory damages, court costs and reasonable attorneys' fees. Each member of an agency's governing board or authority may be found individually liable for a civil fine of up to $10,000.	N/A

MISSOURI Mo. Rev. Stat. §105.055 (2003)	State employees	Employee who discloses violation or discusses the operation of agency with state auditor or members of legislature. Not protected if employee knew information was false, the information is confidential, or the disclosure relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority, or endangerment of the public health or safety.	Violation of any law, rule, or regulation; or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety.	Administrative hearing filed within 30 days of the retaliation, violator may be suspended up to 30 days without pay, or forfeiture of position in cases of willful or repeated violations; board may modify or reverse agency's action and order appropriate relief for the employee.	Statute specifically prohibits any requirement of prior disclosure to supervisor.
MONTANA Mont. Rev. Code Ann. §39-2-901 *et seq.* (Smith 2003)	Public employees	Employee who reports violation or refuses to execute a direction that is a violation.	Violation of public policy, defined as a policy concerning public health, safety, or welfare that is established by constitutional provision, statute, or administrative rule.	Employee must exhaust employer's internal grievance procedures prior to filing a civil case; relief includes lost wages and fringe benefits, interest, punitive damages.	N/A
NEBRASKA Neb. Rev. Stat. §81-2701 *et seq.* (2003)	Employees of any governmental unit excluding courts, the legislature, the governor, and interstate instrumentalities	Employee who reports with reasonable belief to Public Counsel or any elected state official; employee who provides information or testimony pursuant to an investigation or hearing held under the State Government Effectiveness Act.	Violation of any law, an action that results in gross mismanagement or gross waste of funds, or creates a substantial and specific danger to public health or safety.	Administrative hearing, relief including back pay, or other relief as it deems appropriate, including attorneys' fees.	N/A

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
NEVADA Nev. Rev. Stat. §281.611 *et seq.* (2003)	Employees of the state or local government	Employee who reports a violation.	Violation of any state law or regulation, local ordinance, abuse of authority, substantial and specific danger to the public health or safety, or gross waste of public money.	Administrative hearing with a hearing officer of the department of personnel who may issue an order directing the proper person to cease retaliation. Retaliation must occur within 2 years from date of disclosure.	N/A
NEW HAMPSHIRE N.H. Rev. Stat. Ann. §275-E:1 *et seq.* (2003)	Employees of the state or local government	Employee who reports a violation in good faith; participates in any investigation, hearing, or inquiry; or refuses to execute a directive that is a violation.	Violation of any federal, state, or local law or rule.	Administrative hearing with the commissioner of labor, after any grievance procedure or similar process available at the employee's place of employment, remedies including reinstatement, back pay, fringe benefits, and seniority rights, or injunctive relief.	Employee must first bring the alleged violation to the attention of a supervisor and allow the employer reasonable opportunity to correct, unless the employee has specific reason to believe that reporting such a violation would not result in prompt correction.

NEW JERSEY N.J. Stat. Ann. §34:19-1 *et seq.* (West 2003)	Employees of the state, county, municipality, or any other political subdivision of the state	Employee who discloses, or threatens to disclose, a policy of the employer or employer with whom the employee's employer has a business relationship, to a supervisor or public body with reasonable belief; provides information to any public body conducting an investigation, hearing, or inquiry; or objects, or refuses to participate in, any activity that the employee reasonably believes is a violation, is criminal, or is incompatible with public policy concerns of public health and environmental protection; not protected if employee's action was without basis in law or fact.	Violation of law, rule, or regulation; or improper quality of patient care by an employee licensed or certified in the health care professional.	Civil action within one year of retaliation, remedies including all remedies available in common law tort actions, as well as other legal or equitable relief including injunctive relief, reinstatement of employee, lost wages and benefits, court costs and attorneys' fees, and punitive damages; violator may be fined no more than $1,000 for first violation and not more than $5,000 for each subsequent violation.	Employee must bring the complaint to the attention of a supervisor of the employee by written notice, and afford the employer reasonable opportunity to correct the activity; not required where employee is reasonably certain the activity is known to one or more supervisors of the employer or where the employee reasonably fears physical harm as a result of the disclosure; however, exceptions apply to only emergency situations.

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
NEW YORK N.Y. Civ. Serv. Law §75-b (McKinney 2003)	Any public employee, except judges or justices of the unified court system and members of the legislature	Employee who in good faith discloses a violation to a governmental body.	Violation of law, rule, or regulation that creates and presents a substantial and specific danger to the public health or safety; or that the employee reasonably believes constitutes an improper governmental action that violates any federal, state, or local law, rule, or regulation.	Administrative hearing or arbitration if employment contract requires; relief including reinstatement with back pay; and in the case of arbitration may take any other appropriate action as is permitted. Civil action, if not subject to administrative hearing or arbitration, within one year of retaliation; relief including injunctive relief, reinstatement of the employee, reinstatement of benefits and seniority rights, compensation for lost wages and benefits, and court costs and attorneys' fees.	Prior to disclosure employee shall have made a good faith effort to provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health and safety.
N.Y. Lab. Law §740 (McKinney 2003)	Public sector employees	Employee who discloses or threatens to disclose to a supervisor or to a public body; provides information to or testifies before any public body conducting an investigation, hearing, or inquiry; objects to or refuses to participate in a violation.	Activity, policy, or practice of the employer that creates and presents a substantial and specific danger to the public health or safety; violation of any state or federal law, rule, or regulation.	Civil action within one year of retaliation; relief includes injunctive relief, reinstatement, restoration of fringe benefits, back pay, costs, and attorneys' fees.	Employee must bring violation to the attention of a supervisor and allow employer a reasonable opportunity to correct violation.

NORTH CAROLINA N.C. Gen. Stat. §126-84 *et seq.* (2003)	State employees	Employee who reports, or was about to report, to his/her supervisor, department head, or other appropriate authority, where employee has reasonable belief; reports to public bodies about matters of public concern, or refuses to carry out a directive that may constitute a violation or poses a threat to public safety; not protected if employee knows or has reason to believe that the report is inaccurate.	Violation of state or federal law, rule, or regulation; fraud; misappropriation of state resources; substantial and specific danger to the public health and safety; or gross mismanagement, gross waste of monies, or gross abuse of authority.	Civil action, relief including damages, an injunction, reinstatement, back pay, reinstatement of fringe benefits and seniority rights, costs, reasonable attorneys' fees, and for willful violations, treble damages.	Statute specifically provides that notice be given to supervisor or other appropriate authority.
NORTH DAKOTA N.D. Cent. Code §34-11.1-04 *et seq.* (2003)	Employees of the state and local government, except elected officials in the state or in a political subdivision, members of the legislative council staff, persons holding an appointive statutory office, one deputy or principal assistant and one secretary for each elected or appointive official, and all members of the governor's staff	Employee who reports to his/her respective agency head, a state's attorney, the attorney general, or an employee organization.	Job-related violation of local, state, or federal law, rule, regulation, or ordinance; job-related misuse of public resources.	Violation is a class B misdemeanor.	N/A

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
NORTH DAKOTA N.D. Cent. Code §34-01-20 *et seq.* (2003)	Public sector employees	Reporting a violation or suspected violation to an employer, governmental body, or law enforcement official in good faith; being requested by a public body or official to participate in an investigation, hearing, or inquiry; refusing to perform an action that the employee believes, and has an objective basis in fact for so believing, to be a violation.	Any violation of a federal, state, or local law, ordinance, regulation, or rule.	Civil action within 180 days of alleged violation; relief includes reinstatement, back pay, fringe benefits, temporary or permanent injunctive relief, costs, and attorneys' fees. Employee must exhaust any available administrative process, including available grievance procedures under a collective bargaining agreement, employment contract, or public employee procedures. Employee also has the option to file a claim with the state department of labor.	N/A

OHIO Ohio Rev. Code Ann. §4113.51 *et seq.* (Anderson 2003)	Employees of state or agency or instrumentality of the state, municipal corporation, county, town, school district, or other political subdivision or agency or instrumentality thereof	Notifying supervisor or other responsible officer of the employer of a violation; notifying supervisor or other responsible officer of the employer of a fellow employee's violation; reporting a violation to any appropriate public official or agency with regulatory authority; making inquiry or acting to determine accuracy of information to make report.	As to notifying employer of violation, it is the violation of any state or federal statute or any ordinance or regulation of a political subdivision that is a criminal offense likely to cause imminent risk of physical harm, a hazard to public health or safety, or is a felony, and that the employer has the authority to correct; as to making a report to a public official, it is a violation of state laws regarding air pollution, solid and hazardous waste, safe drinking water, or water pollution control that is a criminal offense; as to notifying employer of fellow employee matters, it is a violation of state or federal statute, ordinance or regulation of a political subdivision, work rule or company policy that is a criminal offense likely to cause imminent risk of physical harm, a hazard to public health or safety, or is a felony.	Civil action within 180 days of retaliatory action; relief includes injunctive relief, reinstatement, back pay, fringe benefits, costs, reasonable attorneys' fees, witness fees, and in the case of deliberate violations, the court may award back pay with interest.	Statute specifically requires employee to report violation to supervisor or other responsible officer of the employee's employer. First report may be oral, but employee must also provide written report. If the employer does not correct the violation or make a reasonable and good faith effort to correct the violation within 24 hours after the oral notification or the receipt of the written report, whichever is earlier, the employee may file a written report with the prosecuting authority of the county or municipal corporation where the violation occurred, with a peace officer, with the inspector general if within the inspector general's jurisdiction, or with any other appropriate public official or agency that has regulatory authority.

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
OKLAHOMA Okla. Stat. tit. 74, §840-2.5 *et seq.* (2003)	State employees	Employee who discloses public information of a violation; reports violations with reasonable belief; or discusses the operations and functions of the agency with the Governor, members of Legislature, or other person in a position to investigate or initiate corrective action. Not protected if employee knows information to be false, or knowingly and willingly discloses with reckless disregard for its truth or falsity.	As to disclosure, violation of state constitution or law or rule; as to reports, violation of the state constitution, state or federal law or rule or policy; mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.	Administrative hearing with Oklahoma Merit Protection commission, must file an appeal within 60 days of the alleged violation; corrective action for violator may include suspension without pay, demotion or discharge; any employee found in violation shall be put on probation for 6 months; employee who knowingly and willfully violates shall forfeit his or her position and be ineligible for appointment to or employment in a position in state service for a period of at least one year and no more than five years.	Specifically allows employee to engage in the protected conduct without giving prior notice to the employee's supervisor or anyone else in the employee's chain of command.

OREGON Or. Rev. Stat. §659A.200 *et seq.* (2003)	Employees of the state or an agency or political subdivision, public corporation employees, and public contractor employees	Employee who in good faith discloses any information with reasonable belief; reports criminal activity by any person, causes a complaint to be filed against any person, has cooperated with law enforcement conducting a criminal investigation, brought a civil proceeding against an employer, or testifies before a civil proceeding, criminal trial, the Legislative Assembly or any of its committees. Not protected if employee knows information to be false, or discloses with reckless disregard for the truth or falsity.	Violation of any federal or state law, rule, or regulation by the state, agency, or political subdivision; mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.	Administrative hearing, civil action following hearing.	Specifically prohibits requiring any employee to give notice prior to making any disclosure, except that a supervisor can require that an employee inform the supervisor as to official legislative requests for information to the agency or the substance of testimony made, or to be made, by the employee to legislators on behalf of the agency or subdivision. Employees must report to supervisor or designated official if employee reasonably believes that a person is subject to a felony or misdemeanor warrant for arrest.
PENNSYLVANIA 42 Pa. Cons. Stat.Ann. §1421 *et seq.* (West 2003)	Employees of the state or local government	Employee or person acting on behalf of employee who in good faith reports or is about to report a violation to employer; discloses violation to employer, or appropriate authority; is requested to participate in an investigation, hearing, inquiry, or court action.	Violation that is not of a merely technical or minimal nature of any federal or state law or regulation, or of code of ethics designed to protect interest of public or employer; abuse, misuse, destruction, or loss of funds or resources.	Civil action within 180 days of retaliation, relief including reinstatement, back pay, full reinstatement of fringe benefits and seniority rights, actual damages, attorneys' fees, witness fees, and costs; violator receives civil fine not to exceed $500 and suspension for up to six months for person who acted with the intent to discourage the disclosure of criminal activities.	N/A

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
RHODE ISLAND R.I. Gen. Laws §28-50-1 *et seq.* (2003)	Employees of the state or municipality	Employee who reports or is about to report to a public body a violation that the employee knows or reasonably believes has occurred or is about to occur; is requested to participate in an investigation, hearing or inquiry held by that public body; refuses to violate or assist in the violation. Not protected if knowingly false report made.	Violation or potential violation of federal, state, or local law, regulation, or rule.	Civil action within 3 years of retaliation, relief including reinstatement, back pay, fringe benefits and seniority rights, actual damages, costs, and attorneys' fees.	N/A
SOUTH CAROLINA S.C. Code Ann. §8-27-10 *et seq.* (Law. Co-op. 2003)	Employees of the state or local government	Employee who in good faith files written report of intentional violation with employer or appropriate public body with authority over possible violation. Not protected if employee makes unfounded report or report amounts to a mere technical violation and not made in good faith.	Violation of federal or state law or regulation or a political subdivision ordinance or regulation, or code of ethics that is not merely technical or of a minimum nature; action resulting in substantial abuse, misuse, destruction, or loss of substantial funds or public resources.	Non-jury civil action within one year after reporting the violation and after the employee exhausts all available grievance or other administrative remedies, relief including reinstatement, lost wages, actual damages not to exceed $15,000, reasonable attorneys' fees not to exceed $10,000 for any trial and $5,000 for any appeal. If employee's report results in saving of any public money, employee is entitled to 25% of public funds saved up to $2,000.	If a report is made to an entity other than the public body employing the person making the report, the employing body must be notified as soon as practicable by the entity that received the report.

SOUTH DAKOTA S.D. Codified Laws §3-6A-52 (Michie 2003)	State employees	Employee who reports a violation through the chain of command of the employee's department or to the attorney general's office.	Violation of state law.	Administrative hearing, employee may file grievance with the career service commission if there has been a retaliation; relief not specified.	N/A
TENNESSEE Tenn. Code Ann. §50-1-304 (2003)	Employees of the state, local governments, and municipalities	Employee who refuses to participate in, or refuses to remain silent about, a violation. Frivolous lawsuits not protected.	Violation of criminal or civil code of the state or U.S.; or any regulation intended to protect the public health, safety, welfare.	Civil action, relief including reasonable attorneys' fees and costs.	N/A
TEXAS Tex. Gov't Code Ann. §554.001 *et seq.* (Vernon 2003)	Employees of the state and political subdivisions of the state, except independent contractors	Employee who reports a violation in good faith to an appropriate law enforcement authority.	Violation of state or federal statute, local government ordinance, or a rule adopted under a statute or ordinance.	Administrative hearing, employee must initiate action within 90 days under the grievance or appeal procedures of the employing state or local governmental entity. Civil action within 90 days of violation and at least 60 days after initiating administrative procedures, relief including injunctive relief, actual damages, court costs, reasonable attorneys' fees, reinstatement to former position or equivalent position, back pay, reinstatement of fringe benefits and seniority rights; compensatory damages are capped. Supervisor who violates is liable for a civil penalty not to exceed $15,000.	N/A

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
UTAH Utah Code Ann. §67-21-1 *et seq.* (2003)	Employees of the state, political subdivisions of the state, or agency	Employee or person acting on employee's behalf who reports a violation in good faith; participates in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review; objects to or refuses to carry out a directive that the employee reasonably believes violates a law, rule, or regulation. Employer may not restrict employees' ability to document the existence of a violation.	Existence of any waste of public funds, property, or manpower, or a violation or suspected violation of any federal, state, or local law, rule, or regulation.	Civil action within 180 days of the retaliation, relief including injunctive relief or actual damages, reinstatement at the same level, back pay, reinstatement of fringe benefits and seniority rights, costs, including reasonable attorneys' fees and witness fees; violator is liable for a civil fine of not more than $500.	N/A

WASHINGTON Wash. Rev. Code Ann. §42.40.010 *et seq.* (West 2003)	State employees	Employee who reports a violation in good faith to the State Auditor. Not protected for furnishing knowingly false information.	Violation of federal or state law or rule, if the violation is not merely technical or of minimal nature; a gross waste of public funds or resources; a substantial and specific danger to the public health or safety.	Report to auditor within one year of violation. Administrative hearing or civil action; in administrative hearing, relief including injunctive, reinstatement with or without back pay, and other relief as the administrative law judges see fit, except that damages for humiliation and mental suffering shall not exceed $10,000. Violator may receive civil penalty up to $3,000 and suspension without pay for up to 30 days, at minimum the violator shall have a letter of reprimand in his or her file.	N/A
Wash. Rev. Code Ann. §42.41.010 *et seq.* (West 2003)	Local government employees	Employee who reports a violation in good faith to appropriate governmental body, including the county prosecuting authority.	Violations of federal, state, or local law or rule; abuse of authority; substantial and specific danger to the public health or safety; or a gross waste of public funds.	Administrative hearing, must give written notice to local government within 30 days of retaliation, relief including reinstatement with or without back pay, injunctive relief, costs, and reasonable attorneys' fees; violator may receive civil penalty up to $3,000 and suspension or dismissal.	A local government may require, except in the case of emergency, that before an employee provides information to a person or entity who is not a public official, the employee provide a written report to the local government.

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State	*Coverage*	*Protected conduct*	*Nature of violation for which disclosure is protected*	*Procedure and remedy*	*Opportunity to correct required before protections apply*
WEST VIRGINIA W. Va. Code §6C-1-1 *et seq.* (2003)	Employees of the state or local government	Employee or person acting on employee's behalf who reports or is about to report in good faith violations to the employer or to appropriate public bodies; is requested to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.	Violations that are not technical or minimal of any federal or state law or regulation, or of code of ethics designed to protect interest of public or employer; substantial abuse, misuse, destruction or loss of federal, state, or local funds or resources.	Civil action within 180 days of retaliation, relief including reinstatement and actual damages, back pay, reinstatement of fringe benefits and seniority rights, costs and attorneys' fees; civil fine not to exceed $500; suspension of violator for up to six months.	N/A
WISCONSIN Wis. Stat. Ann. §230.80 *et seq.* (West 2003)	State employees, not including person employed by office of governor, courts, or legislature, person whose immediate supervisor is assigned to an executive salary group or university senior executive salary group	Disclosure of criminal activity to law enforcement agency; disclosure of violation to any person; unless employee anticipates that disclosure is likely to result in receipt of anything of value by employee's immediate family; testifying or assisting in any proceeding by another employee. Not protected if employee knowingly makes an untrue statement.	Violation of any state or federal statute, rule, or regulation; mismanagement, abuse of authority, substantial waste of public funds, or a danger to public health and safety.	Administrative hearing within 60 days after retaliation, relief including reinstatement with or without back pay, transfer within same governmental unit, expungement of adverse material from personnel file, reasonable attorneys' fees; violator may receive notice placed in personnel file, letter of reprimand, suspension, or termination.	Employee must disclose information in writing to supervisor, and ask commission to which government agency report should be made and disclose information solely to that agency before disclosing to any other person.

WYOMING Wyo. Stat. Ann. §9-11-102 *et seq.* (Michie 2003)	State employees who work an average of 20 hours or more per week during any six-month period, not including independent contractors	Employee who reports a violation in good faith, in writing, to the employer with reasonable belief; participates or is requested to participate in any investigation, hearing or inquiry held concerning a violation; has refused to carry out a directive; refuses to carry out a directive that is beyond scope, terms and conditions of employment that would expose that employee or an individual to a condition likely to result in serious injury or death, after having sought correction by employer.	Violation of federal or state law, regulation, code, or rule; condition or practice that would put at risk the health or safety of the employee or any other individual; fraud, waste, or gross mismanagement in state government office.	Civil action within 90 days of retaliation, after exhausting all administrative remedies, relief limited to reinstatement, back pay, reinstatement of benefits, costs and reasonable attorneys' fees. Employee found to have knowingly made a false report shall be subject to disciplinary action by the employer, up to and including dismissal.	Employee must first bring the violation to the attention of a person having supervisory authority over the employee and allow the employer a reasonable opportunity to correct; prior notice does not apply if the employee reasonably believes that the report may not result in prompt correction; in that case the employee shall report the violation to the department or agency director of the state entity with which he is employed.

APPENDIX C

FEDERAL STATUTES PROTECTING EMPLOYEES

This appendix sets forth the federal civil rights, environmental, public health, and workplace safety statutes that protect employees who report violations of these statutes. While most of these statutes are primarily designed to cover private sector employees, some are sufficiently broad that they may also be interpreted to cover public sector employees. As to public sector employees, however, sovereign immunity issues frequently arise that may preclude coverage, even where the statute appears by its wording to protect public sector employees. Practitioners are advised to carefully research judicial interpretations of the following statutes to determine whether any remedies for public sector employees may exist under these statutes.

Finding List of Statutes Discussed in the Table Below, by Name of Statute (in alphabetical order)

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Family and Medical Leave Act (FMLA)
Federal Deposit Insurance Act
Federal Employers' Liability Act (FELA)
Federal Mine Safety & Health Act (FMSHA)
Federal Railroad Safety Act
Federal Water Pollution Control Act
Hazardous Substances Release Act
Health Insurance for the Aged and Disabled, Examination and Treatment for Emergency Medical Conditions and Women in Labor Act
International Safe Container Act
Jury Selection and Service Act
Longshoremen's & Harbor Workers' Compensation Act
Migrant and Seasonal Agricultural Worker Protection Act
Occupational Safety & Health Act (OSHA)
Public Health Service Act
Records and Reports on Monetary Instruments Transactions Act
Safe Drinking Water Act
Sarbanes-Oxley Act
Solid Waste Disposal Act
Surface Mining Control & Reclamation Act
Surface Transportation Assistance Act
Toxic Substances Control Act
Vessels and Seamen Act
Wendell H. Ford Aviation Investment and Reform Act (AIR 21)

Finding List of Statutes Discussed in the Table Below, by Agency Responsible for Enforcement (in alphabetical order)

Department of Labor

- Asbestos Hazard Emergency Response Act
- Clean Air Act
- Comprehensive Environmental Response, Compensation Liability Act (CERCLA)
- Energy Reorganization Act
- Federal Water Pollution Control Act
- Hazardous Substances Release Act
- International Safe Container Act
- Longshoremen's & Harbor Workers' Compensation Act
- Migrant and Seasonal Agricultural Worker Protection Act
- Occupational Safety & Health Act (OSHA)
- Safe Drinking Water Act
- Sarbanes-Oxley Act
- Solid Waste Disposal Act
- Surface Transportation Assistance Act
- Toxic Substances Control Act
- Wendell H. Ford Aviation Investment and Reform Act (AIR 21)

Department of Defense

- Department of Defense Authorization Act of 1984
- Department of Defense Authorization Act of 1987

Equal Employment Opportunity Commission

- Age Discrimination in Employment Act (ADEA)
- Equal Employment Opportunity Act (Title VII)

Federal Mine Safety & Health Review Commission

- Federal Mine Safety & Health Act

National Railroad Adjustment Board

- Federal Railroad Safety Act

Secretary of Interior

- Surface Mining Control & Reclamation Act

Statute	*Substantive Protection*	*Agency Responsible for Enforcement*	*Procedures and Remedies*
Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 *et seq.* (2000). • Section 623 contains the antiretaliation provision. Section 626 contains the procedures and remedies.	Retaliation prohibited for opposing unlawful practice, testifying, participating or assisting in enforcement proceedings.	Equal Employment Opportunity Commission	Administrative investigation (complaint must be filed with EEOC within 180 or 300 days of alleged discrimination), which may result in prosecution by EEOC or by employee in U.S. District Court (suit must be filed within 2 years, or 3 years for willful violations). Damages include reinstatement, backpay, liquidated damages for willful violations, and attorneys' fees.
Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. §2641 *et seq.* (2000). • Section 2651 contains the antiretaliation provision.	Retaliation prohibited for reporting asbestos in schools to any person, including state or federal government.	Department of Labor	Administrative investigation (90 days to file complaint), action may be brought by Secretary of Labor on employee's behalf in U.S. District Court. Damages include reinstatement and backpay.
Asbestos School Hazard Detection Act of 1980, 20 U.S.C. §3601 *et seq.* (2000). • Section 3608 contains the antiretaliation provision.	Retaliation prohibited, by state or local educational agencies receiving federal assistance to remove asbestos, against employees who bring asbestos problem in schools to attention of public.	None	None

Clean Air Act (CAA), 42 U.S.C. §7401 *et seq.* (2000). • Section 7622 contains the antiretaliation provision.	Retaliation prohibited for commencing proceedings, or for testifying, assisting, or participating in enforcement proceedings.	Department of Labor	Administrative hearing before ALJ (30 days to file complaint), review by Secretary of Labor, appeal to U.S. Court of Appeals. Damages include reinstatement, backpay, compensatory damages, and costs and expenses of witness and attorneys' fees.
Commercial Fishing Industry Vessel Act, 46 U.S.C. §2101 *et seq.* (2000). • Section 2114 contains the antiretaliation provision.	Retaliation prohibited for reporting or preparing to report violations of maritime safety laws or regulations, or refusing to perform duties likely to cause serious injury to the seaman or others.	None	Employee may bring civil action in U.S. District Court for reinstatement, backpay, and costs and attorneys' fees (not to exceed $1,000).
Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §9601 *et seq.* (2000). • Section 9610 contains the antiretaliation provision.	Retaliation prohibited for providing information to state or federal government, filing or testifying, or causing to be filed or testified in enforcement proceedings.	Department of Labor	Administrative investigation by Secretary of Labor (30 days to file complaint), including opportunity for public hearing, appeal to U.S. Court of Appeals. Damages include reinstatement, and a sum equal to the aggregate amount of all costs and expenses (including the attorneys' fees) assessed against violator.

(Continued)

Statute	*Substantive Protection*	*Agency Responsible for Enforcement*	*Procedures and Remedies*
Department of Defense Authorization Act of 1984, 10 U.S.C. §1587 (2000).	Retaliation prohibited against civilian employees of Department of Defense for disclosing violations of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety.	Department of Defense	Administrative investigation by Secretary of Defense, who has authority to correct adverse employment actions.
Department of Defense Authorization Act of 1987, 10 U.S.C. §2409 (2000).	Retaliation prohibited against employees of defense contractors who disclose substantial violations of law relating to defense contracts to Members of Congress or authorized representatives of agencies, Departments of Defense or Justice.	Department of Defense	Administrative investigation by Inspector General of agency. Unless frivolous, shall order reinstatement, back pay, benefits, payment of an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witness fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint.
Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001 *et seq.* (2000). • Section 1140 contains the antiretaliation provision.	Retaliation prohibited for giving information, testifying, or being about to give or testify in any inquiry or proceeding relating to the Welfare and Pension Plans Disclosure Act.	None	Civil action in U.S. District Court for reinstatement, backpay, and attorneys' fees.

Energy Reorganization Act of 1974 (ERA), 42 U.S.C. §5801 *et seq.* (2000). • Section 5851 contains the antiretaliation provision.	Retaliation prohibited for commencing proceedings, or for testifying, assisting, commencing, causing to be commenced, or participating in enforcement proceedings.	Department of Labor	Review by Secretary of Labor (180 days to file complaint), appeal to U.S. Court of Appeals. Damages include reinstatement, backpay, compensatory damages, costs and expenses, and attorneys' fees.
Equal Employment Opportunity Act, (Title VII), 42 U.S.C. §2000e *et seq.* (2000). • Section 2000e-3(a) contains the antiretaliation provision.	Retaliation prohibited for "opposing" unlawful practice, making a charge, or testifying, participating, or assisting in enforcement proceedings.	Equal Employment Opportunity Commission	Administrative investigation (180 or 300 days to file charge with EEOC), which may result in prosecution by EEOC or by employee in U.S. District Court (within 90 days of notice of right to sue). Damages include reinstatement, backpay, attorneys' fees, and other equitable relief. Fine of not more than $1,000 and/or not more than one year in prison.
Fair Labor Standards Act (FLSA), 29 U.S.C. §215(a)(3) (2000).	Retaliation prohibited for filing complaint, testifying or being about to testify, in proceedings, or serving or being about to serve on industry committee.	None	Civil action in state or federal court for reinstatement, promotion, backpay, an equal amount of liquidated damages, and attorneys' fees. Violator may receive fine of no more than $10,000 or imprisonment up to six months.

(Continued)

Statute	*Substantive Protection*	*Agency Responsible for Enforcement*	*Procedures and Remedies*
False Claims Act (FCA), 31 U.S.C. §3729 *et seq.* (2000). • Section 3730(h) contains the antiretaliation provision.	Retaliation prohibited for investigating, initiating, testifying, or providing assistance in any action filed or to be filed.	None	Civil action in U.S. District Court for make whole relief, including reinstatement, two times the amount of backpay, interest on the backpay, an equal amount of liquidated damages, special damages, attorneys' fees and costs.
Family and Medical Leave Act (FMLA), 29 U.S.C. §2611 *et seq.* (2000). • Section 2615 contains the antiretaliation provision.	Retaliation prohibited for opposing unlawful practices, filing a charge or instituting a proceeding, giving or being about to give information in connection with any inquiry or proceeding, or testifying or preparing to testify in any inquiry or proceeding.	None	Civil action in state or federal court for reinstatement, backpay, promotion, actual monetary losses up to a sum equal to 12 weeks of wages or salary, an equal amount in liquidated damages, interest on these damages, attorneys' fees and costs. Complaints can also be brought to the Secretary of Labor for investigation and litigation.

Federal Deposit Insurance Act, 12 U.S.C. §1811 *et seq.* (2000). • Section 1831j contains the antiretaliation provisions.	Retaliation prohibited against employees of depository institutions for providing information to any Federal Banking agency or to the Attorney General regarding a possible violation of law or regulation, or gross mismanagement, gross waste of funds, abuse of authority, substantial and specific danger to public health and safety. Retaliation prohibited against employees of banking agencies for providing information to a bank or banking agency or to the Attorney General.	None	Civil action (within two years) in U.S. District Court for reinstatement or compensatory damages, other appropriate remedies.
Federal Employers' Liability Act (FELA), 45 U.S.C. §51 *et seq.* (2000). • Section 60 contains the antiretaliation provision.	Retaliation prohibited for providing information regarding death or injury of employee.	None	Civil action in U.S. District Court within three years of violation. Fine of not more than $1,000, imprisonment not more than one year.

(Continued)

Statute	*Substantive Protection*	*Agency Responsible for Enforcement*	*Procedures and Remedies*
Federal Mine Safety & Health Act (FMSHA), 30 U.S.C. §801 *et seq.* (2000). • Section 815 contains the antiretaliation provision.	Retaliation prohibited for commencing proceedings, or for testifying or assisting in enforcement proceedings.	Federal Mine Safety & Health Review Commission	Administrative hearing before ALJ (60 days to file complaint), review by Federal Mine Safety & Health Review Commission, appeal to U.S. Court of Appeals. Damages include reinstatement, backpay, and attorneys' fees.
Federal Railroad Safety Act, 49 U.S.C. §20101 *et seq.* (2000). • Section 20109 contains the antiretaliation provision.	Retaliation prohibited for complaints regarding enforcement of federal railroad safety laws, testifying in enforcement proceedings, or refusal to work under hazardous conditions; identity of employees who make disclosures required to be kept confidential.	National Railroad Adjustment Board	Administrative investigation that must be completed within 180 days. Damages include reinstatement, backpay, costs, witness fees, attorneys' fees, and punitive damages not to exceed $20,000.
Federal Water Pollution Control Act of 1972, 33 U.S.C. §1251 *et seq.* (2000). • Section 1367 contains the antiretaliation provision.	Retaliation prohibited for filing, instituting, or causing to be filed or instituted any proceeding, or for testifying in enforcement proceedings.	Department of Labor	Administrative hearing before ALJ (30 days to file complaint), review by Secretary of Labor, appeal to U.S. Court of Appeals. Damages include reinstatement, backpay, compensatory damages, and attorneys' fees.

Hazardous Substances Release Act, 42 U.S.C. §9601 *et seq.* (2000). • Section 9610 contains the antiretaliation provision.	Retaliation prohibited for providing information, initiating proceedings, or for testifying in enforcement proceedings.	Department of Labor	Administrative hearing (30 days to file complaint), appeal to U.S. Court of Appeals. Damages include reinstatement, backpay, compensatory damages, and attorneys' fees.
Health Insurance for Aged and Disabled, Examination and Treatment for Emergency Medical Conditions and Women in Labor, 42 U.S.C. §1395dd (2000).	Retaliation prohibited by a participating hospital that penalizes or takes adverse action against a qualified medical person or physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized, or against any hospital employee because the employee reports a violation of a requirement of the statute.	None	Civil action within two years of the adverse action. Damages are those available for personal injury under the law of the state in which the hospital is located, and appropriate equitable relief.
International Safe Container Act, 46 U.S.C. app. §1501 *et seq.* (2000). • Section 1506 contains the antiretaliation provision.	Retaliation prohibited for reporting existence of unsafe container or violation of Act to Secretary of Transportation.	Department of Labor	Administrative investigation by Secretary of Labor (60 days to file complaint), who may file action in U.S. District Court seeking appropriate relief, including reinstatement and backpay.

(Continued)

Statute	*Substantive Protection*	*Agency Responsible for Enforcement*	*Procedures and Remedies*
Jury Selection and Service Act of 1968, 28 U.S.C. §1861 *et seq.* (2000). • Section 1875 contains the antiretaliation provision.	Retaliation prohibited for jury service in federal courts.	None	Employees may apply to the U.S. District Court, which may appoint counsel for employees. Damages include reinstatement and backpay.
Longshoremen's & Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.* (2000). • Section 948a contains the antiretaliation provision.	Retaliation prohibited for having sought workers' compensation, or for testifying in proceedings.	Department of Labor Benefits Review Board	Administrative hearing before ALJ. Damages include reinstatement and backpay.
Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §1801 *et seq.* (2000). • Section 1855 contains the antiretaliation provision.	Retaliation prohibited against migrant workers who, with just cause, file complaint or testify in proceedings, or who exercise any other right under the Act.	Department of Labor	Administrative investigation by the Secretary of Labor (180 days to file complaint), who may bring a civil action in U.S. District Court for reinstatement, backpay, and other damages.
Occupational Safety & Health Act of 1970, 29 U.S.C. §651 *et seq.* (2000). • Section 660 contains the antiretaliation provision.	Retaliation prohibited for filing complaint, testifying in enforcement proceedings, or exercise of any other rights under OSHA (includes limited right to refuse to work).	Department of Labor	Administrative investigation (30 days to file complaint), action may be brought by agency on employee's behalf in U.S. District Court. Damages include reinstatement and backpay.

Public Health Service Act, 42 U.S.C. §201 *et seq.* (2000). • Section 300a-7 contains the antiretaliation provision.	Retaliation prohibited for participation in, or refusal to participate in, sterilization, abortion, or research, on religious or moral grounds.	None	None
Records and Reports on Monetary Instruments Transactions, 31 U.S.C. §5311 *et seq.* (2000). • Section 5328 contains the whistleblower protection provisions.	Retaliation prohibited for providing information to the Secretary of the Treasury, the Attorney General, or any federal supervisory agency regarding a possible violation by the financial institution or nonfinancial trade or business, or any director, officer, or employee of the financial institution or nonfinancial trade or business.	None	Civil action; court may order reinstatement, compensatory damages.
Safe Drinking Water Act, 42 U.S.C. §300f *et seq.* (2000). • Section 300j-9 contains the antiretaliation provision.	Retaliation prohibited for commencing proceedings, or for testifying, assisting, or participating in enforcement proceedings.	Department of Labor	Administrative hearing before ALJ (30 days to file complaint), review by Secretary of Labor, appeal to U.S. Court of Appeals. Damages include reinstatement, backpay, compensatory damages, and attorneys' fees. If Secretary's order is ignored, Secretary may file suit in U.S. District Court.

(Continued)

Statute	*Substantive Protection*	*Agency Responsible for Enforcement*	*Procedures and Remedies*
Sarbanes-Oxley Act of 2002 (civil whistleblower provision only), 18 U.S.C.A. §1514A (West Supp. 2004).	Retaliation prohibited for providing information, assisting investigation, filing a complaint, or testifying, participating, or assisting in a proceeding relating to federal fraud laws.	Department of Labor	Administrative hearing before ALJ (90 days to file complaint), review by the Secretary of Labor (who has delegated authority to the Administrative Review Board), appeal to U.S. Court of Appeals. If 180 days pass after filing complaint and no final decision has been issued, claims may be brought in federal district court. Damages include reinstatement, backpay, compensatory damages, attorneys' fees, and costs.
Solid Waste Disposal Act, 42 U.S.C. §6901 *et seq.* (2000). • Section 6971 contains the antiretaliation provision.	Retaliation prohibited for commencing proceedings, or for testifying, assisting, or participating in enforcement proceedings	Department of Labor	Administrative hearing before ALJ (30 days to file complaint), review by Secretary of Labor, appeal to U.S. Court of Appeals. Damages include reinstatement, backpay, compensatory damages, attorneys' fees, and costs.
Surface Mining Control & Reclamation Act of 1977, 30 U.S.C. §1201 *et seq.* (2000). • Section 1293 contains the antiretaliation provision.	Retaliation prohibited for filing complaint or testifying in enforcement proceedings.	Secretary of Interior	Administrative hearing (30 days to file complaint), review in U.S. Court of Appeals. Damages include reinstatement, backpay and attorneys' fees.

Surface Transportation Assistance Act, 49 U.S.C. §31100 *et seq.* (2000). • Section 31105 contains the antiretaliation provision.	Retaliation prohibited for filing a complaint or instituting any proceeding relating to violations of motor vehicle safety rules, testifying in such proceeding, or refusing to operate unsafe vehicle.	Department of Labor	Administrative investigation by Secretary of Labor (180 days to file complaint), appeal to U.S. Court of Appeals following a hearing. Damages include reinstatement, back pay, compensatory damages, and attorneys' fees. If Secretary's order is ignored, Secretary may file suit in U.S. District Court.
Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (2000). • Section 2622 contains the antiretaliation provision.	Retaliation prohibited for commencing proceedings, or for testifying, assisting, or participating in enforcement proceedings.	Department of Labor	Administrative hearing before ALJ (30 days to file complaint), review by Secretary of Labor, appeal to U.S. Court of Appeals. Damages include reinstatement, backpay, compensatory damages, and attorneys' fees. If Secretary's order is ignored, Secretary may file suit in U.S. District Court.
Vessels and Seamen Act, 46 U.S.C. §2101 *et seq.* (West Supp. 2003). • Section 2114 contains the antiretaliation provision.	Retaliation prohibited for reporting or preparing to report violations of maritime safety laws or regulations, or refusing to perform duties likely to cause serious injury to the seaman or others.	None	Civil action in U.S. District Court for reinstatement, backpay, and costs and attorneys' fees (not to exceed $1,000).

(Continued)

Statute	*Substantive Protection*	*Agency Responsible for Enforcement*	*Procedures and Remedies*
Wendell H. Ford Aviation Investment and Reform Act (AIR 21), 49 U.S.C. §42121 (2000).	Retaliation prohibited for providing information to employer or federal government, filing or being about to file a proceeding about a violation, or testifying or assisting in such a proceeding.	Department of Labor	Administrative investigation by Secretary of Labor (90 days to file complaint), including opportunity for hearing on the record, appeal to U.S. Court of Appeals. Damages include reinstatement, backpay, compensatory damages, costs and expenses, and attorneys' fees. If a claim is frivolous or brought in bad faith, employer may be awarded reasonable attorneys' fees not to exceed $1,000.

APPENDIX D

COMMON LAW PUBLIC POLICY PROTECTIONS FOR WHISTLEBLOWERS

This appendix sets forth a state-by-state analysis of whether the courts of the 53 jurisdictions in the United States (including the District of Columbia, Puerto Rico, and the Virgin Islands) have held, or stated in *dicta,* that they would recognize a public policy cause of action, and whether the public policy exception in each jurisdiction has been extended to protect whistleblowers. At the time of this writing, 45 of 53 jurisdictions have recognized public policy claims of one form or another. With the exception of four states (Arkansas, Idaho, South Dakota, and Wisconsin), the public policy claim sounds in tart rather than contract. Forty jurisdictions have extended the public policy doctrine to protect whistleblowers under circumstances that may vary significantly:

- Some jurisdictions (e.g., Texas) protect only passive whistleblowers who refuse to commit criminal violations.
- Other jurisdictions (e.g., California, Illinois, and New Jersey) protect many forms of passive, active, internal, and external whistleblowing about violations of both civil and criminal law.

Thus, practitioners must be careful to understand the specific contours of the public policy exception under the law of the applicable jurisdiction. For that reason, the discussion below mentions not only representative cases in which the courts have recognized public policy causes of action, but also representative cases in which the courts have declined to (1) recognize public policy causes of action; (2) protect whistleblowing under any circumstances; or (3) protect certain types of whistleblowing.

Some states have enacted whistleblower protection statutes in addition to recognizing common law causes of action in favor of whistleblowers. This appendix sets forth only common law protections under state law. State statutes protecting whistleblowers are set forth in Appendix A (protections for public sector employees) and Appendix B (protections for private sector employees). Cases discussing the interplay between common law and statutory whistleblower protections in specific jurisdictions are also discussed below, when such cases have arisen.

ALABAMA

No public policy exception has been recognized.

- *Wright v. Dothan Chrysler Plymouth Dodge, Inc.,* 658 So. 2d 428 (Ala. 1995) (upholding right of employer to discharge employee and stating

that it is the function of the legislature, not the courts, to create a public policy exception to the employment-at-will doctrine);
- *Hoffman-LaRoche v. Campbell,* 512 So. 2d 725, 2 IER Cases 739 (Ala. 1987) (upholding the lower court's judgment for the employee, however stating that the court had repeatedly refused to recognize the public policy exception);
- *Dykes v. Lane Trucking, Inc.*, 652 So. 2d 248 (Ala. 1994) (affirming summary judgment for the employer and refusing to carve out a public policy exception to the employee-at will doctrine); and
- *Grant v. Butler,* 590 So. 2d 254, 6 IER Cases 1612 (Ala. 1991) (not allowing claim where employee reported allegedly unsafe conditions under federal Occupational Safety and Heath Act).

However, the Alabama legislature has made it illegal for an employer to terminate an employee for requesting workers' compensation benefits. *See* ALA. CODE §25-5-11.1 (2003). That statute has been construed to allow causes of action for constructive discharge.

- *Ex parte Breitsprecher,* 772 So. 2d 1125, 16 IER Cases 557 (Ala. 2000).

ALASKA

Alaska courts have not rejected a public policy exception, but they have encompassed it within the implied covenant of good faith and fair dealing.

- *Knight v. American Guard & Alert, Inc.,* 714 P.2d 788 (Alaska 1986) (recognizing claim for breach of covenant of good faith for security officer who claimed he was fired in retaliation for informing pipeline operator of alcohol use and drug abuse of another security officer);
- *Luedtke v. Nabors Alaska Drilling, Inc.*, 768 P.2d 1123, 4 IER Cases 129 (Alaska 1989) (upholding discharge of employees for failing to submit to urine analysis screening although court recognized strong public policies supporting employee privacy), *appeal after remand,* 834 P.2d 1220, 7 IER Cases 834 (Alaska 1992);
- *Cameron v. Beard,* 864 P.2d 538, 145 L.R.R.M. 2553 (Alaska 1993) (upholding verdict in favor of employee and holding that a general release of workers' compensation claims does not also release retaliatory discharge claims; finding that constructive discharge should be distinguished from the public policy exception to the employment-at-will doctrine; and recognizing that a small minority of jurisdictions have defined it as a breach of an implied contractual duty not to discharge an employee for an act done in the public interest); and
- *Lincoln v. Interior Regional Housing Authority,* 30 P.3d 582, 17 IER Cases 1638 (Alaska 2001).

ARIZONA

In 1996, the Arizona legislature passed the Employment Protection Act, which creates a cause of action in favor of employees who are terminated in retaliation for disclosing violations of Arizona's Constitution or statutes. *See* ARIZ. REV. STAT. ANN. §23-1501(3)(c)(ii) (West 2004), and related discussion in Appendices A and B. The Employment Protection Act is the exclusive remedy for wrongful termination in violation of public policy.

- *Cronin v. Sheldon,* 195 Ariz. 531, 991 P.2d 231, 15 IER Cases 1345 (1999).

The Arizona courts had previously recognized the public policy cause of action and extended its protection to whistleblowers in some circumstances.

- *Wagenseller v. Scottsdale Memorial Hospital,* 147 Ariz. 370, 710 P.2d 1025, 1 IER Cases 526 (1985) (recognizing public policy claim based on indecent exposure laws for employee who refused to "moon" co-workers in skit on company outing);
- *Vermillion v. AAA Pro Moving & Storage,* 146 Ariz. 215, 704 P.2d 1360, 119 LRRM 2337 (Ariz. Ct. App. 1985) (recognizing claim for employee allegedly dismissed for refusing to participate in theft);
- *Wagner v. City of Globe,* 150 Ariz. 82, 722 P.2d 250, 1 IER Cases 501 (1986) (recognizing claim by employee terminated from the police force because he refused to conceal the illegal arrest and detention of a citizen and was instrumental in having the citizen brought before a magistrate); and
- *Murcott v. Best Western International, Inc.,* 198 Ariz. 349, 9 P.3d 1088, 16 IER Cases 1277 (Ariz. Ct. App. 2000) (internal whistleblowing protected).

— *But see Garber v. Embry-Riddle Aeronautical University,* 259 F. Supp. 2d 979, 14 AD Cases 518 (D. Ariz. 2003) (denying reconsideration of dismissal of the employee's whistleblower claim filed under the Arizona Whistleblower Statute, ARIZ. REV. STAT. ANN. §23-1501(3)(c)(ii), because the employee's claim was barred by the statute's one-year limitations period); and *Galati v. America West Airlines, Inc.,* 69 P.3d 1011, 20 IER Cases 42 (Ariz. Ct. App. 2003) (upholding dismissal of employee's claim because ARIZ. REV. STAT. ANN. §23-1501(3)(c)(ii) applies only to violations of Arizona law and does not apply to disclosures of violations of federal provisions, statutes, or regulations).

ARKANSAS

Arkansas has recognized the public policy exception (as a contractual theory, not a tort theory) and has extended it to protect whistleblowers in some circumstances.

- *Island v. Buena Vista Resort,* 103 S.W.3d 671 (Ark. 2003) (finding that public policy of the State of Arkansas is violated when an at-will employee

is terminated for rejecting a solicitation to engage in prostitution, and employee had a valid claim of wrongful discharge if she was terminated for refusing her supervisor's sexual propositions); and

- *Sterling Drug, Inc. v. Oxford,* 294 Ark. 239, 743 S.W.2d 380, 3 IER Cases 1060 (1988) (recognizing public policy claim for employee suspected of disclosing employer's submission of false and incomplete pricing data during negotiations for a government contract).

— *But see Ball v. Arkansas Department of Community Punishment,* 10 S.W.3d 873 (Ark. 2000) (denying employee's claim of retaliatory discharge because employee's claim that she was fired in retaliation for "blowing the whistle" on parole hearing procedures did not allege violation of any specific statute).

CALIFORNIA

California has recognized a public policy exception that protects whistleblowers under some circumstances.

- *Tameny v. Atlantic Richfield Co.,* 27 Cal. 3d 167, 164 Cal. Rptr. 839, 610 P.2d 1330, 1 IER Cases 102 (1980) (finding public policy claim stated by employee who refused to engage in antitrust violations);
- *Garcia v. Rockwell International Corp.,* 187 Cal. App. 3d 1556, 232 Cal. Rptr. 490 (1986) (indicating employee can maintain a tort action for retaliatory discipline against employer where disciplinary action less than termination has been taken against the employee in retaliation for the employee's whistleblowing activities);
- *Semore v. Pool,* 217 Cal. App. 3d 1087, 266 Cal. Rptr. 280, 5 IER Cases 129 (1990) (claim stated by employee who refused to submit to drug testing);
- *Green v. Ralee Engineering Co.,* 19 Cal. 4th 66, 960 P.2d 1046, 78 Cal. Rptr. 2d 16, 14 IER Cases 449 (1998) (finding that a fundamental public policy based on disclosure of violation of federal aviation regulation could serve as the foundation of an employee's tort action for retaliatory discipline);
- *Phillips v. Gemini Moving Specialists,* 63 Cal. App. 4th 563, 74 Cal. Rptr. 2d 29, 13 IER Cases 1587 (1998) (recognizing public policy claim by employee who complained about the employer setting off the employee's debts from wages due to the employee without the employee's authorization); and
- *Gardenhire v. Housing Authority,* 85 Cal. App. 4th 236, 101 Cal. Rptr. 2d 893, 17 IER Cases 32 (2000) (finding that public employee entitled to bring an action for retaliation even though the public employee reported improprieties internally to her employer and not externally to a separate government agency or law enforcement agency).

— *But see Foley v. Interactive Data Corp.,* 47 Cal. 3d 654, 254 Cal. Rptr. 211, 765 P.2d 373, 3 IER Cases 1729 (1988) (explaining that public policy claim stated where claim is based on firmly established policy that benefits

the public generally; however, no claim recognized for employee who was allegedly discharged for reporting prior criminal investigation of co-employee); *Turner v. Anheuser-Busch, Inc.*, 7 Cal. 4th 1238, 32 Cal. Rptr. 2d 223, 9 IER Cases 1185 (1994) (internal company policies not sufficient to support public policy claim); *Luck v. Southern Pacific Transportation Co.*, 218 Cal. App. 3d 1, 267 Cal. Rptr. 618, 5 IER Cases 414 (1990) (not recognizing tort claim for employee who refused to submit to drug testing applying *Foley* criteria); *Daly v. Exxon Corp.*, 55 Cal. App. 4th 39, 63 Cal. Rptr. 2d 727, 12 IER Cases 1531 (1997) (not recognizing public policy claim for wrongful discharge for an employee who complained about unsafe working conditions where the employee's employment contract was for a fixed term and had expired); and *Jersey v. John Muir Medical Center,* 97 Cal. App. 4th 814, 118 Cal. Rptr. 2d 807, 18 IER Cases 888 (2002) (not recognizing tort claim recognized for nursing assistant who refused to dismiss assault claim against patient because the right to bring such a suit could have been expressly waived).

COLORADO

The Colorado Supreme Court has adopted the public policy exception to the at-will employment doctrine that extends to some whistleblowing activity.

- *Martin Marietta Corp. v. Lorenz,* 823 P.2d 100, 105, 7 IER Cases 77 (Colo. 1992) (upholding the decision for the employee when the employer fired the employee for refusing to perform acts in violation of federal law).

Martin Marietta expanded Colorado's public policy exception to include instances in which the employer discharged the employee after the employee complain about practices that did not violate a statute, but did violate public policy. However, to fall within the exception, the employee must demonstrate that the employer was aware or reasonably should have been aware that the employee's action was based on the employee's reasonable belief that the action ordered by the employer was illegal, against public policy, or violative of the employee's legal rights as a worker.

- *Rocky Mountain Hospital & Medical Service v. Mariani,* 916 P.2d 519, 11 IER Cases 1153 (Colo. 1996) (determining that Colorado State Board of Accountancy Rules of Professional Conduct were sufficient to establish public policy for the purposes of a wrongful discharge claim);
- *Jones v. Stevinson's Golden Ford,* 36 P.3d 129, 17 IER Cases 865 (Colo. Ct. App. 2001) (recognizing claim for employee allegedly terminated for refusing to sell unnecessary car repairs, based on policy expressed in Colorado consumer protection statutes), *cert. denied* (2001); and
- *Cronk v. Intermountain Rural Electric Association,* 765 P.2d 619, 3 IER Cases 1049 (Colo. Ct. App. 1988) (recognizing public policy claim for public utility employees who refused to testify untruthfully before regulatory commission).

— *But see Coors Brewing Co. v. Floyd,* 978 P.2d 663, 14 IER Cases 1232 (Colo. 1999) (refusing to expand the public policy exception to include a

situation in which an employee performed the illegal act required by his or her employer, and then the employer allegedly fired the employee to cover up the employer's complicity in the crime); *Crawford Rehabilitation Services, Inc. v. Weisman,* 938 P.2d 540, 12 IER Cases 1671 (Colo. 1997) (state regulations regarding rest breaks not a sufficient basis for public policy claim); and *Corbin v. Sinclair Mktg., Inc.,* 684 P.2d 265, 116 LRRM 3223 (Colo. Ct. App. 1984) (not allowing public policy claim when a statute provides the employee with a wrongful discharge remedy).

CONNECTICUT

The common law public policy exception may no longer extend to whistleblowers because the intermediate Connecticut appellate courts have ruled that the exclusive remedy is provided by the Connecticut whistleblower protection statute. As discussed in Appendices A and B, the Connecticut legislature passed an act entitled "Protection of employee who discloses employer's illegal activities or unethical practices." CONN. GEN. STAT. ANN. §31-51m (West 2003). This law makes it illegal for an employer to "discharge, discipline or otherwise penalize any employee because the employee, or a person acting on behalf of the employee[] reports . . . a violation or a suspected violation of any state or federal law or regulation or any municipal ordinance . . . or because an employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body, or a court action." *Id.* §31-51m(b).

Furthermore, Section 31-51m provides the exclusive remedy for wrongful discharge of both public and private employees for "whistleblowing," and any alternative, common-law cause of action is precluded.

- *Campbell v. Town of Plymouth,* 811 A.2d 243 (Conn. App. Ct. 2002) (finding that plaintiff-employee's claim was time barred because he did not file within the 90-day limitations period.) The courts have found that the statute protects employees when the employees adequately demonstrate the causal connection between the whistleblowing and the statutory violation;
- *Arnone v. Town of Enfield,* 2001 Conn. Super. LEXIS 2009 (July 23, 2001) (holding that the municipal employee had a valid claim against the city under the whistleblower statute because he adequately estabilished a causal connection between his filing a complaint with the state's department of Environmental Protection and his termination 15 months later); and
- *L'Altrella v. Weight Watchers International,* CV 950334348, 1998 Conn. Super. LEXIS 845 (Mar. 16, 1998) (finding that employee made a valid claim under the whistleblower statute when she was terminated after refusing to engage in conduct that allegedly violated the Connecticut Antitrust Act).

— However, the Connecticut state courts do not extend the protection of the whistleblowing statute to employees who intend to, but never actually make certain allegations, or who do not publish their findings in a public forum. *See Tyszkiewicz v. Aaron Manor, Inc.,* CV 970081800S, 1998 Conn. Super. LEXIS 1650 (June 9, 1998) (refusing to protect employee

when the employee only intended to, but never did engage in, reporting health code violations by employer); *Burnham v. Karl & Gelb, P.C.*, 252 Conn. 153, 16 IER Cases 1 (2000) (upholding summary judgment in employer's favor because the plaintiff-employee failed to report her suspicions to a public body).

For the history of the case law before enactment of the whistleblower statute, see *Sheets v. Teddy's Frosted Foods, Inc.*, 179 Conn. 471, 427 A.2d 385, 115 LRRM 4626 (1980) (public policy claim recognized for employee who complained about food packaging violations); and *Girgenti v. Cali-Con Inc.*, 15 Conn. App. 130, 544 A.2d 655 (1988) (finding public policy claim stated by discharged theater employee allegedly fired after he called police and turned on the lights, causing the theater to empty, because he feared there was an intruder in the projection room).

DELAWARE

Delaware has recognized a tort cause of action for wrongful discharge in violation of public policy.

- *Schuster v. Derocili*, 775 A.2d 1029, 17 IER Cases 1159 (Del. 2001) (allowing claim based on public policy expressed in state antidiscrimination statute).

The public policy cause of action may extend to whistleblowers who are terminated in violation of a specifically legislated public policy.

- *Shearin v. E.F. Hutton Group, Inc.*, 652 A.2d 578, 9 IER Cases 1317 (Del. Ch. 1994) (recognizing that legal counsel allegedly fired for refusing to violate her ethical duties stated a cause of action).

— However, Delaware does not recognize a public policy exception for termination of a private sector employee for whistleblowing concerning internal financial and business practices. *See Lord v. Souder*, 748 A.2d 393, 16 IER Cases 373 (Del. 2000).

As discussed in Appendix A, the Delaware legislature has protected public employees fired or threatened after exposing the wrongdoing of their government employer. *See* DEL. CODE ANN. tit. 29, §5115(b) (2003) ("No public employee shall be discharged, threatened or otherwise discriminated against with respect to the terms or conditions of employment because that public employee reported, in a written or oral communication to an elected official, a violation or suspected violation of a law or regulation promulgated under the law of the United States, this State, its school districts, or a county or municipality of this State unless the employee knows that the report is false.").

DISTRICT OF COLUMBIA

The District of Columbia has recognized a public policy cause of action that extends to whistleblowers in some circumstances. The public policy exception

protects employees who are terminated in violation of a "clear showing, based on some identifiable policy that has been 'officially declared'" in a statute or municipal regulation, or in the Constitution.

- *Carl v. Children's Hospital,* 702 A.2d 159, 13 IER Cases 563 (D.C. 1997) (en banc) (reversing the dismissal of employee's claim that she had been terminated in retaliation for publicly opposing tort reform measures);
- *Adams v. George W. Cochran & Co.,* 597 A.2d 28, 6 IER Cases 1392 (D.C. 1991) (finding that discharged at-will employee may sue for wrongful discharge when the sole reason for the discharge is the employee's refusal to drive a vehicle without a current inspection sticker required by municipal regulation);
- *Washington v. Guest Services, Inc.,* 718 A.2d 1071, 14 IER Cases 643 (D.C. 1998) (claim stated by employee allegedly discharged for complaints about sanitary violations);
- *Fingerhut v. Children's National Medical Center,* 738 A.2d 799, 17 IER Cases 1139 (D.C. 1999) (claim allowed even if whistleblower participates in unlawful conduct later reported); and
- *Liberatore v. Melville Corp.,* 168 F.3d 1326, 14 IER Cases 1545 (D.C. Cir. 1999) (embryonic whistleblower protected when threatens to report violations of law).

FLORIDA

No common law public policy cause of action has been recognized in Florida.

- *Smith v. Piezo Technology & Professional Administrators,* 427 So. 2d 182, 117 LRRM 3378 (Fla. 1983) (recognizing only narrow implied right of action in favor of employees terminated in retaliation for filing workers' compensation claim).

As discussed in Appendices A and B, the Florida legislature has enacted statutory causes of action in favor of both public and private employees. The Whistleblower's Act makes it illegal for a government agency or an independent contractor to dismiss or discipline an employee for disclosing to any investigating authority, both internal or external, violations of agency rules or regulations, federal, state, or local laws, or acts of gross mismanagment, malfeasance, misfeasance, or neglect of duty. FLA. STAT. ANN. §112.3187(4)-(6) (West 2004). In addition, the Private Sector Whistleblower Act penalizes any private employer for taking retaliatory personnel action against an employee who has disclosed or threatened to disclose in writing to any appropriate governmental agency, an employer's activity, policy, or practice that violates a law, rule, or regulation. *Id.* §448.102(1). Furthermore, the Act also protects private employees who are fired after either participating or testifying before any appropriate governmental agency concerning the employer's alleged violation or objected to or refused to participate in the employer's activity or practice that violated a law, rule or regulation. *Id.* §448.102(2)-(3). While the statute offers broad protection, the statute clearly states that it applies only to protect the employee when the employee has

"in writing brought the activity, policy, or practice to the attention of a supervisor or the employer and has afforded the employer a reasonable opportunity to correct the activity, policy or practice." *Id.* §448.102(1).

The Florida courts have chosen to read the Whistleblower Act protecting public employees broadly.

- *Irven v. Department of Health & Rehabilitation Services,* 790 So. 2d 403, 405-06, 17 IER Cases 888 (Fla. 2001) (reinstating jury verdict in favor of employee who was fired after she complained in writing interdepartmentally and to her superiors concerning the propriety of an agency decision; the court wrote that the "[Whistleblower] Act is remedial and should be given a liberal construction."); and
- *Martin County v. Edenfield,* 609 So. 2d 27, 8 IER Cases 71 (Fla. 1992) (reversing lower court because the lenient treatment of a co-perpetrator could be used as evidence to infer a violation of the Whistleblower's Act).

The Florida courts have also broadly interpreted the Private Employee Whistleblower Act.

- *Golf Channel v. Jenkins,* 752 So. 2d 561, 15 IER Cases 1574 (Fla. 2000) (recognizing that plaintiff had a valid claim because the Act requires the employee to give the employer written notice and a chance to cure prior to disclosing to a public body only in the case of disclosures of statutory or regulatory breaches, not when an employee refuses to perform an employer's illegal activity).

GEORGIA

No public policy cause of action is recognized.

- *Eckhardt v. Yerkes Regional Primate Center,* 561 S.E.2d 164, 18 IER Cases 1302 (Ga. Ct. App. 2002) (refusing to extend public policy protection to the circumstances and affirming the dismissal of employees' claim that they were wrongfully terminated following their internal reporting that the employer was creating a public health risk by transporting monkeys that were highly contagious with a virulent Herpes B virus);
- *Reilly v. Alcan Aluminum Corp.,* 272 Ga. 279, 528 S.E.2d 238, 16 IER Cases 211 (2000);
- *Jellico v. Effingham County,* 471 S.E.2d 36 (Ga. Ct. App. 1996) (affirming dismissal of a public employee's claim of constructive wrongful termination after employee resigned because his supervisor certified certain buildings for habitation after the employee had refused to certify those same buildings due to code violations, because this type of discharge was not contemplated by the legislature); and
- *Evans v. Bibb Co.,* 178 Ga. App. 139, 342 S.E.2d 484 (1986) (refusing to create a public policy exception for employee alleging wrongful discharge for filing workers' compensation claim).

HAWAII

Hawaii has recognized the public policy exception.

- *Parnar v. Americana Hotels, Inc.*, 65 Haw. 370, 652 P.2d 625, 115 LRRM 4817 (1982) (court recognized public policy claim for an employee discharged to prevent the employee from participating in an antitrust investigation); and
- *Mathewson v. Aloha Airlines, Inc.*, 919 P.2d 969, 152 LRRM 2986 (Haw. 1996) (employee's termination because he had allegedly been blacklisted by a union was contrary to the clear public policy against "blacklisting" and discrimination in the hiring, tenure or other conditions of employment with regard to the nonmembership in a labor organization).

The Hawaii courts have extended the public policy exception to include whistleblowing under some circumstances.

- *Smith v. Chaney Brooks Realty, Inc.*, 10 Haw. App. 250, 865 P.2d 170, 175, 10 IER Cases 1111 (1994) (reversing summary judgment for employer when employee claimed that employer fired him in retaliation for his inquiry into a paycheck deduction);
- *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 88 FEP Cases 387 (9th Cir. 2002) (applying Hawaii law and denying employee's retaliation claim stating that there was no causal connection between his filing a claim of sexual harassment and his termination 18 months later; stating that the public policy exception applies to actions against an employer by an at-will employee who was discharged for performing an important public obligation such as whistleblowing or refusing to violate a professional code of ethics); and
- *Morishige v. Spencecliff Corp.*, 720 F. Supp. 829, 4 IER Cases 1271 (D. Haw. 1989) (public policy exception may apply to employee who was allegedly discharged due to objections to his employer's violation of liquor laws and building codes).

— *But see Pagdilao v. Maui Intercontinental Hotel*, 703 F. Supp. 863, 3 IER Cases 1628 (D. Haw. 1988) (finding no free speech claim for employee who allegedly used obscenities in public setting).

IDAHO

Idaho has recognized a public policy exception (as a contractual theory, not a tort theory) that extends to whistleblowers in some circumstances.

- *Thomas v. Medical Center Physicians, P.A.*, 61 P.3d 557 (Idaho 2002) (finding that reporting another physician's misconduct fell under the public policy exception because the conduct alleged by the physicians was unlawful, and it involved the health and welfare of the public);
- *Crea v. FMC Corp.*, 135 Idaho 175, 16 P.3d 272, 17 IER Cases 112 (2000) (recognizing claim for employee allegedly terminated for disclosing that employer had caused contamination that threatened ground water);

- *Hummer v. Evans,* 129 Idaho 274, 923 P.2d 981, 12 IER Cases 122 (1996) (determining that employee was protected for letter written in response to subpoena in criminal sentencing proceeding); and
- *Ray v. Nampa School District No. 131,* 120 Idaho 117, 814 P.2d 17 (1991) (recognizing claim for employee allegedly terminated for reporting building code violations).

— *But see Edmondson v. Shearer Lumber Products,* 139 Idaho 172, 75 P.3d 733, 20 IER Cases 632 (2003) (finding that employee did not have a cause of action against a private sector employer who terminated the employee because of the exercise of the employee's constitutional right of free speech due to the fact that in the private sector, state or federal constitutional free speech cannot, in the absence of state action, be the basis of a public policy exception in wrongful discharge claims).

ILLINOIS

Illinois has recognized the public policy exception.

- *Kelsay v. Motorola, Inc.,* 74 Ill. 2d 172, 384 N.E.2d 353, 115 LRRM 4371 (1978) (public policy claim recognized for an employee discharged for filing workers' compensation claim).

The Illinois Supreme Court has extended the public policy doctrine to protect whistleblowers.

- *Palmateer v. International Harvester Co.,* 85 Ill. 2d 124, 421 N.E.2d 876, 115 LRRM 4165 (1981) (referring to whistleblowers as "citizen crime-fighters");
- *Brandon v. Anesthesia & Pain Management Associates, Ltd.,* 277 F.3d 936, 18 IER Cases 412 (7th Cir. 2002) (recognizing claim based on federal rather than Illinois criminal statutes);
- *Vorpagel v. Maxwell Corp. of America,* 333 Ill. App. 3d 51, 775 N.E.2d 658, 19 IER Cases 209 (2002) (allowing cause of action in favor of employee allegedly terminated for telling state attorney's office about supervisor's admission about crime unrelated to work), *appeal denied,* 202 Ill. 2d 664 (2002);
- *Vance v. Dispatch Management Service,* 122 F. Supp. 2d 910, 15 IER Cases 1776 (N.D. Ill. 2000) (recognizing claim by employee who sought court protective order against threatening co-employee);
- *Stebbings v. University of Chicago,* 312 Ill. App. 3d 360, 726 N.E.2d 1136, 17 IER Cases 1079 (2000) (allowing claim of employee who raised concerns about radiation safety);
- *Fredrick v. Simmons Airlines, Inc.,* 144 F.3d 500, 13 IER Cases 1729 (7th Cir. 1998) (allowing plaintiff's claim even though complaints were made publicly instead of through internal channels); and
- *Bourbon v. Kmart Corp.,* 223 F.3d 469, 16 IER Cases 1032 (7th Cir. 2000) (stating that whistleblower need only have a reasonable belief that law was violated and need not prove actual legal violation).

— *But see Arres v. IMI Cornelius Remcor,* 333 F.3d 812, 20 IER Cases 1866 (7th Cir. 2003) (not recognizing claim for employee allegedly terminated for attempting to follow federal immigration law because federal statute contained no antiretaliation provision, and Illinois law would not imply a remedy); *Buckner v. Atlantic Plant Maintenance, Inc.,* 694 N.E.2d 565, 13 IER Cases 1607 (Ill. 1998) (upholding a former supervisor's motion to dismiss because employee allegedly fired for seeking workers' compensation benefits could bring a retaliatory discharge claim against only the employer); *Jacobson v. Knepper & Moga, P.C.,* 185 Ill. 2d 372, 706 N.E.2d 491, 14 IER Cases 1160 (1998) (not recognizing claim for attorney terminated for disclosing allegedly unlawful debt collection practices of law firm); *Barr v. Kelso-Burnett Co.,* 106 Ill. 2d 520, 478 N.E.2d 1354, 120 LRRM 3401 (1985) (not recognizing cause of action for retaliatory discharge); *Shearson Lehman Bros., Inc. v. Hedrich,* 266 Ill. App. 3d 24, 639 N.E.2d 228, 9 IER Cases 1826 (1994) (not allowing claim where only employee's personal issues regarding compensation involved); *Eisenbach v. Esformes,* 221 Ill. App. 3d 440, 582 N.E.2d 196 (1991) (not allowing claim where employee allegedly was terminated for filing a lawsuit against his employer); and *Balla v. Gambro, Inc.,* 584 N.E.2d 104, 7 IER Cases 1 (Ill. 1991) (affirming summary judgment for employer because in-house counsel who are terminated for whistleblowing activities are not protected under the public policy exception because attorneys already have an ethical obligation under the Model Rules of Professional Conduct to reveal information necessary to prevent a client from committing a crime).

INDIANA

Indiana has recognized the public policy exception, beginning with cases in which employees alleged they had been terminated for filing workers' compensation claims.

- *Frampton v. Central Ind. Gas Co.,* 297 N.E.2d 425, 115 LRRM 4611 (Ind. 1973) (recognizing public policy claim for employee discharged for filing workers' compensation claim); and
- *Dale v. J.G. Bowers, Inc.,* 709 N.E.2d 366, 14 IER Cases 1833 (Ind. Ct. App. 1999).

Indiana has gradually expanded the public policy doctrine to protect passive whistleblowers who allege they were terminated for refusing to commit unlawful acts.

- *McGarrity v. Berlin Metals, Inc.,* 774 N.E.2d 71, 19 IER Cases 889 (Ind. Ct. App. 2002) (protecting employee who refused to misstate company's financial position, potentially in violation of tax laws); and
- *McClanahan v. Remington Freight Lines, Inc.,* 517 N.E.2d 390, 2 IER Cases 1888 (Ind. 1988) (recognizing claim for employee fired for refusing to drive truck exceeding state weight limit).

— However, the Indiana courts have not extended the public policy exception to active whistleblowers. *See Hamann v. Gates Chevrolet, Inc.*, 723 F. Supp. 63, 4 IER Cases 890 (N.D. Ind. 1989), *aff'd*, 910 F.2d 1417, 5 IER Cases 1099 (7th Cir. 1990); *Morgan Drive Away, Inc. v. Brant*, 489 N.E.2d 933, 1 IER Cases 961 (Ind. 1986) (not recognizing claim for employee allegedly terminated for filing small claims suit against employer); *Campbell v. Eli Lilly & Co.*, 413 N.E.2d 1054, 115 LRRM 4417 (Ind. Ct. App. 1980) (not allowing claim for whistleblowing about safety of pharmaceutical products); and *Lawson v. Haven Hubbard Homes, Inc.*, 551 N.E.2d 855, 5 IER Cases 285 (Ind. Ct. App. 1990) (not recognizing claim for employee who was terminated for filing for unemployment compensation).

IOWA

Iowa has recognized a public policy exception in some whistleblowing situations.

- *Fitzgerald v. Salsbury Chemical, Inc.*, 613 N.W.2d 275, 16 IER Cases 994 (Iowa 2000) (reversing summary judgment for employer, and finding that employee was fired in violation of public policy in favor of truthful testimony because employer fired him because it believed he would testify in favor of a former co-worker in the co-worker's wrongful discharge case); and
- *Smuck v. National Management Corp.*, 540 N.W.2d 669, 11 IER Cases 33 (Iowa Ct. App. 1995) (recognizing claim against employer for violation of public policy for terminating employee for refusing to assist the defendant-employer in a scheme to defraud federal subsidy program).

— *But see Zyblut v. Harvey's Iowa Management Co., Inc.*, No. 03-1752 (8th Cir. Mar. 25, 2004) (no constructive discharge claim available to alleged whistleblower); *Gaston v. Restaurant Co.*, 260 F. Supp. 2d 742, 91 FEP Cases 1411 (N.D. Iowa 2003) (granting summary judgment for employer because workers' compensation claim was not the determinative factor in the employer's decision to terminate employee); *Born v. Blockbuster Videos, Inc.*, 941 F. Supp. 868, 12 IER Cases 154 (S.D. Iowa 1996) (no free speech right in private sector employment protected employees discharged for violating no-dating rule); and *Benishek v. Cody*, 441 N.W.2d 399 (Iowa Ct. App. 1989) (no cause of action where employee was terminated for unsubstantiated suspicion of theft).

For the historical evolution of the case law, *see Abrisz v. Pulley Freight Lines, Inc.*, 270 N.W.2d 454, 115 LRRM 4777 (Iowa 1978) (stating in *dicta* that public policy exception would be created in an appropriate case); and *Springer v. Weeks & Leo Co.*, 429 N.W.2d 558, 3 IER Cases 1345 (Iowa 1988) (recognizing claim for wrongful discharge when pursuing workers' compensation).

KANSAS

Kansas has recognized the public policy exception.

- *Murphy v. City of Topeka-Shawnee County Department of Labor Services,* 6 Kan. App. 2d 488, 630 P.2d 186, 115 LRRM 4433 (1981) (recognizing claim for employee who filed workers' compensation claim).

The public policy doctrine has been extended to protect whistleblowers in some circumstances.

- *Palmer v. Brown,* 242 Kan. 893, 752 P.2d 685, 3 IER Cases 177 (1988) (announcing the whistleblower exception that creates a tort of wrongful termination when an employee is terminated in retaliation for the good-faith reporting of a co-worker's or employer's serious infraction of rules, regulations, or law pertaining to public health, safety, and the general welfare);
- *Coleman v. Safeway Stores, Inc.,* 242 Kan. 804, 752 P.2d 645, 3 IER Cases 170 (1988) (extending *Murphy* to recognize a public policy claim for employees covered by a collective bargaining agreement);
- *Flenker v. Williamette Industries, Inc.,* 967 P.2d 295, 14 IER Cases 913 (Kan. 1998) (protecting employee for workplace safety complaints);
- *Connelly v. State Highway Patrol,* 271 Kan. 944, 26 P.3d 1246 (2001) (protecting employees who reported violations of highway inspection laws);
- *Prager v. State Department of Revenue,* 271 Kan. 1, 20 P.3d 39 (2001) (Kansas taxation statutes were sufficient basis for pubic policy claim); and
- *Hysten v. Burlington Northern Santa Fe Railway Co.,* 85 P.3d 1183 (Kan. 2004) (recognizing claim for employee allegedly terminated for exercising rights under Federal Employers Liability Act).

— *But see Goodman v. Wesley Medical Center, L.L.C.,* 276 Kan. 586, 78 P.3d 817, 20 IER Cases 933 (2003) (affirming summary judgment for the employer on employee's retaliatory discharge claims because the Kansas Nurse Practice Act could not be the basis for a public policy exception to the employment-at-will doctrine because it did not have sufficiently definite or specific rules).

KENTUCKY

Kentucky has recognized a narrow public policy exception.

- *Firestone Textile Co. Division, Firestone Tire and Rubber Co. v. Meadows,* 666 S.W.2d 730, 1 IER Cases 1800 (Ky. 1983) (claim recognized for employee who filed workers' compensation benefits).

In some cases the Kentucky courts have extended the public policy exception to whistleblowing activity.

- *Northeast Health Management, Inc. v. Cotton,* 56 S.W.3d 440, 18 IER Cases 208 (Ky. Ct. App. 2001) (upholding jury verdict in favor of employees who alleged wrongful discharge after refusing to testify on employer's behalf in matter unrelated to work).

— *But see Zumot v. Data Management Co.,* No. 2002-CA-002454, 2004 WL 405888 (Ky. Ct. App. Mar. 5, 2004) (not recognizing claim for employee who reported owner's allegedly fraudulent practices to owner's business partners); *Boykins v. Housing Authority of Louisville,* 842 S.W.2d 527, 8 IER Cases 1 (Ky. 1992) (affirming summary judgment for the employer who terminated employee for filing suit against the employer on a matter not related to employment); *Nelson Steel Corp. v. McDaniel,* 898 S.W.2d 66, 10 IER Cases 737 (Ky. 1995) (finding that Kentucky law does not recognize a public policy exception based on an employee's filing of workers' compensation claims against prior employer); and *Grzyb v. Evans,* 700 S.W.2d 399, 1 IER Cases 1125 (Ky. 1985) (not allowing common law claim for employee allegedly terminated based on sex discrimination because of adequacy of statutory remedies).

LOUISIANA

Louisiana has recognized a very limited public policy exception.

- *Cabrol v. Town of Youngsville,* 106 F.3d 101, 12 IER Cases 950 (5th Cir. 1997) (stating that an at-will public employee may not be discharged for exercising his First Amendment right to freedom of expression, but finding for employer because employee was a private employee with no property interest in her employment position);
- *Moore v. McDermott, Inc.,* 494 So. 2d 1159 (La. 1986) (recognizing retaliatory discharge claim for employee who had pursued workers' compensation claim).

— However, Louisiana does not extend the public policy exception to passive whistleblowers in the private sector who are fired for refusing to perform an illegal activity. *See Wusthoff v. Bally's Casino Lakeshore Resort, Inc.,* 709 So. 2d 913, 914–15 (La. Ct. App. 1998) (The court explained that *Gil v. Metal Service Corp.,* 412 So. 2d 706, 115 LRRM 4460 (La. Ct. App. 1982) had denied the employee's claim when he was terminated for refusing to perform an activity he believed was illegal, and had stated, "[b]road policy considerations creating exceptions to employment at will and affecting relations between employer and employee should not be considered by this court.").

MAINE

Maine has yet not recognized the public policy exception.

- *Finn v. Maine State Employees Association,* No. CV-86-414, 1991 Me. Super. LEXIS 127 (1991) (finding that the courts had not adopted the

public policy exception and granting summary judgment in favor of employer on employee's claims that he was wrongfully terminated for his refusal to violate the professional and ethical obligations of his profession);

- *Larrabee v. Penobscot Frozen Foods, Inc.*, 486 A.2d 97, 100, 118 LRRM 2489 (Me. 1984) (the highest court of Maine did not adopt a public policy exception even though in *dicta,* it stated that "[w]e do not rule out the possible recognition of such a cause of action when the discharge of an employee contravenes some strong public policy"); and
- *Linnell v. Camden Yacht Club,* No. CV-84-1214, 1987 Me. Super. LEXIS 68 (1987) (granting employer's motion for summary judgment and stating that Maine has not recognized the tort of wrongful discharge as an exception to the employee-at-will doctrine).

— *But see Smith v. Heritage Salmon, Inc.,* 180 F. Supp. 2d 208 (D. Me. 2002) (suggesting that Maine's highest court might recognize a public policy claim, but holding that no claim exists for employees who refuse to carry out instructions they believe to be illegal).

MARYLAND

Maryland has recognized a limited public policy exception in the whistleblowing context.

- *Adler v. American Standard Corp.*, 291 Md. 31, 432 A.2d 464, 115 LRRM 4130 (1981) (recognizing tort of abusive or wrongful discharge, but finding that employee's allegations that he was terminated to cover up corporate misconduct failed to identify a specific public policy).

— However, under Maryland law, a claim for wrongful discharge must be based on a "clear mandate of public policy," and provide a remedy for an otherwise unremedied violation of public policy. *Porterfield v. Mascari II, Inc.,* 374 Md. 402, 434, 823 A.2d 590, 19 IER Cases 1967 (2003) (holding that Maryland law has not recognized a clear public policy mandate protecting the right to consult with an attorney in a civil setting so as to give rise to a cause of action for wrongful discharge). Maryland courts have found a mandate of public policy sufficiently clear in only two limited circumstances: (1) where an employee has been discharged for refusing to violate the law; or (2) where an employee has been fired for exercising a specific legal right or duty. *Szaller v. American National Red Cross,* 293 F.3d 148, 18 IER Cases 1232 (4th Cir. 2002). Thus, the public policy exception does not protect internal whistleblowers who report suspected criminal activity to co-employees or supervisors, but do not report to the appropriate law enforcement or judicial official, although external whistleblowers would be protected. *Wholey v. Sears, Roebuck & Co.,* 370 Md. 38, 803 A.2d 482, 18 IER Cases 1313 (2002) (determining that clear statutory public policy exists that protects employees from termination for reporting suspected criminal activities to the appropriate law enforcement authorities, but not employees who make only internal reports).

MASSACHUSETTS

Massachusetts has recognized the public policy exception and has extended its protection to whistleblowers in some circumstances.

- *Derose v. Putnam Management Co.,* 398 Mass. 205, 496 N.E.2d 428, 1 IER Cases 1672 (1986) (finding that public policy protects an employee who is dismissed for refusing to follow his employer's instructions to give false testimony);
- *Flesner v. Technical Communications Corp.,* 410 Mass. 805, 575 N.E.2d 1107, 6 BNA Cases 1530 (1991) (Massachusetts has a public policy of encouraging cooperation with ongoing state or federal criminal investigations, which protects employees who participate in investigations);
- *Shea v. Emmanuel College,* 425 Mass. 761, 682 N.E.2d 1348, 13 IER Cases 308 (1997) (employee who reports suspected criminal activity to her supervisors, but who does not make a report to public authorities, is protected by public policy exception); and
- *Hutson v. Analytic Sciences Corp.*, 860 F. Supp. 6, 9 IER Cases 1420 (D. Mass. 1994) (the federal district court determined that the Massachusetts Supreme Judicial Court would approve consideration of federal law as a potential source of well-defined important public policy of the Commonwealth).

— However, the public policy exception has been allowed only in situations where an employee has been terminated for: (1) asserting a legally guaranteed right (e.g., filing a workers' compensation claim); (2) fulfilling a legal duty (e.g., serving on a jury); (3) refusing to commit an illegal act (e.g., committing perjury); or (4) cooperating with an investigation of the employer by law enforcement. *Wright v. Shriners Hospital for Crippled Children,* 412 Mass. 469, 589 N.E.2d 1241, 7 IER Cases 553 (1992) (holding that employee's reporting of an "internal matter" cannot be the basis for a public policy exception to the at-will rule). *See also Upton v. JWP Businessland,* 425 Mass. 756, 682 N.E.2d 1357, 13 IER Cases 305 (1997) (determining that no clearly established public policy exists that requires employers to refrain from demanding adult employees work long hours); *Korb v. Raytheon Corp.,* 410 Mass. 581, 574 N.E.2d 370, 6 IER Cases 1002 (1991) (determining that state constitutional right of free speech did not protect employee of defense contractor who advocated publicly reducing the defense budget); *Mistishen v. Falcone Piano Co.,* 36 Mass. App. Ct. 243, 630 N.E.2d 294, 9 IER Cases 550 (1994) (not recognizing claim for employee who complained internally about product safety); and *GTE Products Corp. v. Stewart,* 421 Mass. 22, 653 N.E.2d 161, 10 IER Cases 1507 (1995) (not recognizing claim for in-house counsel where no clear professional duty identified).

MICHIGAN

Michigan has recognized the public policy exception in the whistleblowing context.

- *Suchodolski v. Michigan Consolidated Gas Co.*, 412 Mich. 692, 695, 316 N.W.2d 710, 115 LRRM 4449 (1982) (in some situations the discharge of an at-will employee may be so contrary to public policy as to be actionable; however, the employee's allegations regarding alleged accounting irregularities did not rise to the level of violations of public policy).

The Michigan Whistle-Blowers' Protection Act (WPA) discussed in Appendices A and B, however, preempts a wrongful discharge tort claim based on an employer's violation of the state's public policy for protecting whistleblowers.

- *Dudewicz v. Norris-Schmid, Inc.*, 443 Mich. 68, 503 N.W.2d 645, 8 IER Cases 1158 (1993) (holding public policy claim is sustainable only where there also is not an applicable statutory prohibition against discharge in retaliation for the conduct at issue).

MINNESOTA

Minnesota has adopted a whistleblower protection statute that applies to public and private sector employees, as discussed in Appendices A and B. *See* MINN. STAT. ANN. §181.932 (West 2004). The statute may have "displaced" the common law tort action for wrongful discharge. *Piekarski v. Home Owners Savings Bank, F.S.B.*, 956 F.2d 1484 (8th Cir. 1992) (stating that Minnesota does not recognize a common law action for discharge based on refusal to violate a law that exists independently of the action under the whistleblower statute).

The Minnesota courts had recognized the public policy doctrine before enactment of the whistleblower protection statute.

- *Phipps v. Clark Oil & Refining Corp.*, 408 N.W.2d 569, 2 IER Cases 341 (Minn. 1987) (recognizing claim for employee who alleged he was terminated for refusing to violate the federal Clean Air Act).

MISSISSIPPI

Mississippi has recognized a limited public policy exception that protects some whistleblowers. The Supreme Court of Mississippi found "at least two" forms of protected activity: (1) where an employee refuses to participate in an "illegal act"; and (2) where an employee reports "illegal acts" of his or her employer.

- *McArn v. Allied Bruce-Terminix Co.*, 626 So. 2d 603, 8 IER Cases 1314 (Miss. 1993); and
- *Willard v. Paracelsus Health Care Corp.*, 681 So. 2d 539, 12 IER Cases 142 (Miss. 1996) (finding that public policy tort claim is independent tort giving rise to punitive damages).

— However, federal courts applying the *McArn* exception have consistently held that it does not protect activity other than the reporting of, or refusal to commit, criminal acts. *Howell v. Operations Management International, Inc.*, 77 Fed. Appx. 248 (5th Cir. 2003) (citing cases).

MISSOURI

The Missouri intermediate appellate courts have recognized a limited public policy exception and have extended its protection to whistleblowers in some cases.

- *Boyle v. Vista Eyewear, Inc.*, 700 S.W.2d 859, 2 IER Cases 768 (Mo. Ct. App. 1985) (finding that employee discharged for threatening to report employer's violation of federal regulations requiring treatment and testing of eyeglass lenses had sufficiently stated claim under public policy exception);
- *Beasley v. Affiliated Hospital Products*, 713 S.W.2d 557, 1 IER Cases 601 (Mo. Ct. App. 1986) (holding cause of action stated under public policy exception when employee alleged she was discharged for refusing to fix a raffle);
- *Kirk v. Mercy Hospital Tri-County*, 851 S.W.2d 617, 8 IER Cases 522 (Mo. Ct. App. 1993) (determining that employee who reported improper patient care stated a claim although employee did not rely on a direct violation of a law or regulation);
- *Clark v. Beverly Enterprises-Missouri, Inc.*, 872 S.W.2d 522, 9 IER Cases 270 (Mo. Ct. App. 1994) (determining that cause of action stated under public policy exception when employee in good faith reported patient mistreatment to an appropriate authority);
- *Porter v. Reardon Machine Co.*, 962 S.W.2d 932, 14 IER Cases 890 (Mo. Ct. App. 1998) (stating that employee who made internal report of unsafe working environment was not required to also make external report or prove that discharge was explicitly prohibited by statute; however, employee failed to show that employer violated a constitutional provision, statute, regulation, or clear mandate of public policy); and
- *Brenneke v. Department of Missouri, Veterans of Foreign Wars of United States of America*, 984 S.W.2d 134, 14 IER Cases 992 (Mo. Ct. App. 1998) (internal complaints by whistleblower protected).

— *But see Link v. K-Mart Corp.*, 689 F. Supp. 982, 3 IER Cases 979 (W.D. Mo. 1988) (not recognizing public policy exception for employee who reported misuses and thefts to employer since employee had not implicated any statute, regulation or constitutional provision); and *Faust v. Ryder Commercial Leasing & Servs.*, 954 S.W.2d 383, 13 IER Cases 226 (Mo. Ct. App. 1997) (not recognizing public policy exception for employee who reported manager's suspected criminal activity to that manager only and not to an appropriate internal or external authority).

MONTANA

The Montana Supreme Court has expressed reluctance to recognize a public policy exception.

- *Keneally v. Orgain,* 186 Mont. 1, 606 P.2d 127, 115 LRRM 4576 (1980) (stating in *dicta* that public policy claim is recognized; however, no cause of action for salesman employee who complained that employer was not properly servicing products sold by employee).

In 1987, the Montana Legislature passed the Montana Wrongful Discharge from Employment Act of 1987, which incorporates the public policy doctrine, and provides that it is the exclusive remedy. MONT. CODE ANN. §§39-2-901 to 915. *See Solle v. Western States Insurance Agency, Inc.,* 2000 Mont. 96, 299 Mont. 237, 999 P.2d 328, 16 IER Cases 364 (2000).

NEBRASKA

Nebraska has recognized a public policy exception and has indicated that this protection would be extended to whistleblowing in some circumstances.

- *Ambroz v. Cornhusker Square Ltd.,* 226 Neb. 899, 416 N.W.2d 510, 2 IER Cases 1185 (1987) (finding that discharge of an at-will employee for refusing to submit to a polygraph examination violated public policy);
- *Schriner v. Meginnis Ford Co.,* 228 Neb. 85, 421 N.W.2d 755, 3 IER Cases 129 (1988) (starting in *dicta* that action for wrongful discharge exists when an at-will employee acting in good faith reports to his employer a suspected violation of criminal code; however, in this case employee could not maintain cause of action for wrongful discharge as he did not have reasonable cause to believe that his employer had violated odometer fraud statutes);
- *Simonsen v. Hendricks Sodding & Landscaping Inc.,* 5 Neb. App. 263, 558 N.W.2d 825 (1997) (finding that *prima facie* case of termination in violation of public policy stated where employee refused to violate criminal law by driving a truck with defective brakes); and
- *Jackson v. Morris Communications Corp.,* 265 Neb. 423, 657 N.W.2d 634, 19 IER Cases 1256 (2003) (determining that employee discharged for filing a workers' compensation claim stated a claim because the substantive rights created by Nebraska's workers' compensation act present a clear mandate of public policy).

— *But see Malone v. American Business Information,* 262 Neb. 733, 634 N.W.2d 788, 7 WH Cases 2d 659 (2001) (not recognizing public policy exception for employee who complained about unauthorized withholding of wages because Nebraska's wage payment law is remedial in nature, does not contain criminal penalties, does not limit employer's right to discharge at-will employees, and thus does not declare an important public policy); and *Blair v. Physicians Mutual Insurance Co.,* 242 Neb. 652, 496 N.W.2d 483, 8 IER Cases 562 (1993) (not recognizing public policy claim available for employee terminated for alleged drug distribution).

NEVADA

Nevada has recognized a limited public policy exception.

- *Hansen v. Harrah's,* 100 Nev. 60, 675 P.2d 394, 115 LRRM 3024 (1984) (recognizing public policy exception for employee who filed workers' compensation claim).

The public policy exception has been extended to cover whistleblowers in some circumstances.

- *D'Angelo v. Gardner,* 107 Nev. 704, 819 P.2d 206, 6 IER Cases 1545 (1991) (recognizing public policy claim where employer dismissed employee for refusing to work under conditions unreasonably dangerous to that employee); and
- *Allum v. Valley Bank of Nevada,* 114 Nev. 1313, 970 P.2d 1062, 14 IER Cases 1244 (1998) (stating that recovery for retaliatory discharge may not be had on a "mixed motives" theory, thus employee must demonstrate that his protected conduct was proximate cause of his discharge; employee need only prove that he reasonably suspected, in good faith, that employer participated in illegal conduct; employee need not prove that employer explicitly gave employee the choice of participating in the illegal activity or losing his job).

— *But see Wiltsie v. Baby Grand Corp.,* 105 Nev. 291, 774 P.2d 432, 4 IER Cases 638 (1989) (finding that internal whistleblower allegedly discharged for reporting illegal activity of his supervisor to his employer could not recover for retaliatory discharge because employee chose to report the activity to his employer rather than to the appropriate authorities); and *Wayment v. Holmes,* 112 Nev. 232, 912 P.2d 816, 11 IER Cases 983 (1996) (not recognizing tortious discharge claim for attorney who reported to the district attorney that a claim being prosecuted was frivolous because attorney discharged ethical duty at that point, but attorney's continued argument with district attorney about how to handle the case was insubordination).

NEW HAMPSHIRE

New Hampshire has recognized the public policy exception, and under some circumstances it has been extended to protect whistleblowers.

- *Porter v. City of Manchester,* No. 2003-099, 2004 WL 1078139 (N.H. May 14, 2004) (recognizing specifically tort claim for wrongful termination in violation of public policy; allowing employee to pursue constructive termination claim where employee alleged he was forced to quit after harassment by supervisor who issued press release characterizing plaintiff as "disgruntled" employee; employee had complained about alleged abuses in welfare department);

- *Cloutier v. Great Atlantic & Pacific Tea Co.*, 121 N.H. 915, 436 A.2d 1140, 115 LRRM 4329 (1981) (recognizing public policy exception for employee allegedly discharged for complaining about lack of security and refusing to jeopardize safety by making nightly cash deposits);
- *Cilley v. New Hampshire Ball Bearings, Inc.*, 128 N.H. 401, 514 A.2d 818, 1 IER Cases 521 (1986) (holding that claim stated by plaintiff who refused to lie to the company president to cover for another company official); and
- *Bliss v. Stow Mills, Inc.*, 146 N.H. 550, 786 A.2d 815, 17 IER Cases 1248 (2001) (recognizing claim for truck driver allegedly terminated for safety complaints).

— *But see Short v. School Administration Unit No. 16,* 136 N.H. 76, 612 A.2d 364 (1992) (not recognizing tortious discharge claim because public policy does not protect the refusal to criticize a supervisor who opposes the views of a public employer); and *MacDonald v. Tandy Corp.*, 983 F.2d 1046 (1st Cir. 1993) (public policy exception not recognized for employee fired after being suspected of thievery and subsequently cooperating with theft investigation because no causal link was shown between termination and the cooperation, and cooperation with theft investigation did not immunize employee from findings of the investigation).

NEW JERSEY

New Jersey has recognized the public policy exception and extended its protection to whistleblowing activity in some cases.

- *Pierce v. Ortho Pharmaceutical Corp.*, 84 N.J. 58, 417 A.2d 505, 1 IER Cases 109 (1980) (recognizing public policy theory, but not in circumstance of this case where doctor refused to continue research on infant drug);
- *Kalman v. Grand Union Co.*, 183 N.J. Super. 153, 443 A.2d 728, 115 LRRM 4803 (1982) (recognizing claim for an employee discharged for refusing to violate state pharmacy regulations);
- *Potter v. Village Bank of N.J.*, 225 N.J. Super. 547, 543 A.2d 80, 3 IER Cases 1076 (1988) (stating that bank president and CEO who reported bank director's suspected involvement in laundering drug money to law enforcement officials were protected from retaliatory discharge by the public policy exception); and
- *Ballinger v. Delaware River Port Authority,* 172 N.J. 586, 800 A.2d 97, 18 IER Cases 1336 (2002) (recognizing claim for police officer allegedly discharged for reporting suspected criminal activity, even though he also asserted a claim under the New Jersey Conscientious Employee Protection Act).

— *But see Warthen v. Toms River Community Memorial Hospital,* 199 N.J. Super. 18, 488 A.2d 229, 118 LRRM 3179 (1985) (finding no claim for nurse who refused to perform procedure on moral grounds); *House v. Carter-Wallace, Inc.*, 232 N.J. Super. 42, 556 A.2d 353, 4 IER Cases

587 (1989) (determining that internal whistleblowing not protected, only making reports to external authorities); *Hennessey v. Coastal Eagle Point Oil Co.,* 129 N.J. 81, 609 A.2d 11, 7 IER Cases 1057 (1992) (determining that wrongful discharge claim not available to oil refinery employee who was in a safety-sensitive position and who was fired for failing random urine test because public policy supporting safety outweighs any public policy supporting individual privacy rights); *Chelly v. Knoll Pharmaceuticals,* 295 N.J. Super. 478, 685 A.2d 498, 12 IER Cases 624 (1996) (determining that difference in medical judgment regarding the timing of disclosure of clinical trial information to the FDA, no matter how well-grounded, does not form a sufficient basis for wrongful discharge cause of action); and *Maw v. Advanced Clinical Communications, Inc.,* 846 A.2d 604, 21 IER Cases 471 (N.J. 2004) (not recognizing claim for employee who refused to sign allegedly unenforceable noncompetition agreement).

NEW MEXICO

New Mexico has recognized the public policy exception and in some cases has extended its protection to whistleblowers.

- *Vigil v. Arzola,* 102 N.M. 682, 699 P.2d 613, 2 IER Cases 377 (1983) (recognizing public policy exception for employee who reported unauthorized use of federal monies to employer), *rev'd on other grounds,* 687 P.2d 1038, 2 IER Cases 394 (N.M. 1984), *overruled on other grounds,* 108 N.M. 643, 777 P.2d 371 (1989);
- *Chavez v. Manville Products Corp.,* 108 N.M. 643, 777 P.2d 371, 4 IER Cases 833 (1989) (finding that employee who was allegedly discharged for refusing to engage in political lobbying for his employer stated a claim under the public policy exception);
- *Michaels v. Anglo American Auto Auctions, Inc.,* 117 N.M. 91, 869 P.2d 279, 9 IER Cases 420 (1994) (recognizing public policy exception for employee who filed a claim for workers' compensation benefits); and
- *Weidler v. Big J. Enterprises,* 124 N.M. 591, 953 P.2d 1089 (N.M. Ct. App. 1997) (recognizing public policy exception for employee who raised workplace safety concerns; employee had to prove that employer had either suspicion or actual knowledge of protected activity).

— *But see Silva v. American Federation of State, County and Municipal Employees,* 131 N.M. 364, 37 P.3d 81, 18 IER Cases 552 (2001) (determining that public policy exception is available only to at-will employees, not to employees with remedy available under collective bargaining agreement).

NEW YORK

New York has consistently declined to create a common law tort of wrongful or abusive discharge.

- *Murphy v. American Home Products Corp.*, 58 N.Y.2d 293, 448 N.E.2d 86, 115 LRRM 4953 (N.Y. 1983) (not recognizing public policy claim for employee allegedly discharged for complaint of improprieties);
- *Leibowitz v. Bank Leumi Trust Co. of New York,* 548 N.Y.S.2d 513, 4 IER Cases 1786 (N.Y. App. Div. 1989) (not recognizing public policy exception for employee who reported illegal activities because she failed to allege any violation of laws that presented a "substantial and specific danger to the public health or safety"); and
- *Horn v. New York Times,* 100 N.Y.2d 85, 790 N.E.2d 753, 19 IER Cases 1262 (N.Y. 2003) (not allowing claim for breach of implied-in-law obligation for physician who was employed by nonmedical employer and who refused to disclose patient confidential information without patient consent; refusing to extend *Wieder v. Srala* discussed below).

New York has created a narrow exception to the at-will employment doctrine by adopting a cause of action for breach of an implied-in-law obligation.

- *Wieder v. Skala,* 80 N.Y.2d 628 (N.Y. 1992) (not recognizing public policy exception for attorney discharged by firm for his insistence that a second attorney's misconduct be reported as required by governing disciplinary rules; however, attorney stated claim for breach of contract based on implied-in-law obligation in the relationship with the firm because the attorney's performance of professional services for the firm's clients as a duly admitted member of the Bar was at the very core of the relationship with the firm, and the firm's efforts to prevent compliance with applicable rules of professional conduct would subvert the central professional purpose of the relationship with the firm).

NORTH CAROLINA

North Carolina has adopted a narrow public policy exception that may extend to whistleblowers in some circumstances.

- *Sides v. Duke University,* 74 N.C. App. 331, 328 S.E.2d 818, 1 IER Cases 512 (1985) (recognizing claim for employee allegedly discharged for testifying truthfully in medical malpractice action against employer), *overruled on other grounds by Kurtzman v. Applied Analytical Industries, Inc.*, 347 N.C. 329, 493 S.E.2d 420, 13 IER Cases 798 (1997);
- *Coman v. Thomas Manufacturing Co.*, 325 N.C. 172, 381 S.E.2d 445, 4 IER Cases 987 (1989) (finding that public policy exception stated by employee who refused to comply with employer's instructions to violate federal safety regulations); and
- *Amos v. Oakdale Knitting Co.*, 331 N.C. 348, 416 S.E.2d 166, 7 IER Cases 714 (1992) (recognizing claim for employee fired for refusing to work for less than the statutory minimum wage).

— *But see Guy v. Travenol Laboratories, Inc.*, 812 F.2d 911, 1 IER Cases 1553 (4th Cir. 1987) (not recognizing public policy exception to the at-will employment doctrine unless an employee was terminated for refusing

to give perjured testimony); *Daniel v. Carolina Sunrock Corp.*, 335 N.C. 233, 436 S.E.2d 835 (1993) (not allowing claim for employee allegedly terminated for expressing willingness to testify in co-worker's favor when no testimony given because co-worker's case settled); *Haburjak v. Prudential Bache Securities, Inc.*, 759 F. Supp. 293 (W.D.N.C. 1991) (not allowing claim for employee allegedly terminated for disclosing insider trading violations), *aff'd*, 23 F.3d 402 (4th Cir. 1994); and *Considine v. Compass Group USA, Inc.*, 145 N.C. App. 314, 551 S.E.2d 179, 18 IER Cases 300 (2001) (in-house counsel who discovered and reported employer's alleged unlawful billing practices in connection with government contracts failed to state a claim because employee's complaint failed to allege the nature of the employer's conduct and how that conduct violated North Carolina's public policy).

NORTH DAKOTA

The North Dakota whistleblower statute, discussed in Appendices A and B is the exclusive remedy for whistleblowers.

- *Vandall v. Trinity Hospitals*, 2004 ND 47, 676 N.W.2d 88, 20 IER Cases 1835 (2004).

North Dakota had previously recognized a limited public policy exception.

- *Krein v. Marian Manor Nursing Home*, 415 N.W.2d 793, 2 IER Cases 1188 (N.D. 1987) (recognizing claim for employee allegedly discharged for seeking workers' compensation);
- *Ressler v. Humane Society of Grand Forks*, 480 N.W.2d 429, 7 IER Cases 152 (N.D. 1992) (determining that public policy prohibited employer from discharging employee in retaliation for honoring subpoena and informing employer she was prepared to testify contrary to employer's interest in a criminal proceeding); and
- *Ghorbanni v. North Dakota Council on Arts*, 2002 N.D. 22, 639 N.W.2d 507, 18 IER Cases 571 (2002) (action for retaliatory discharge in violation of public policy is a tort).

— *But see Jose v. Northwest Bank of North Dakota, N.A.*, 1999 N.D. 175, 599 N.W.2d 293, 15 IER Cases 892 (1999) (stating that public policy, which must be evidenced by a constitutional or statutory provision, does not recognize a claim for retaliatory discharge for employees who participated in internal investigations).

OHIO

Ohio has recognized a public policy exception to the at-will employment doctrine.

- *Greeley v. Miami Valley Maintenance Contractors, Inc.*, 49 Ohio St. 3d 228, 551 N.E.2d 981, 5 IER Cases 257 (1990) (public policy claim

recognized for employee who was discharged because child support payments were withheld from wages; distinguishing *Phung v. Waste Management, Inc,* 23 Ohio St. 3d 100, 491 N.E.2d 1114, 2 IER Cases 786 (1986), in which the court held that no public policy exception would be recognized absent a very clear public policy), *overruled in part by* Tulloh v. Goodyear Atomic Corp., 584 N.E. 2d 729, 7 IER Cases 309 (Ohio 1992), *overruled by* Painter v. Gray, 639 N.E.2d 51 (Ohio 1994).

The public policy exception has been extended to protect whistleblowers in some circumstances.

- *Kulch v. Structural Fibers, Inc.,* 78 Ohio St. 3d 134, 677 N.E.2d 308, 12 IER Cases 1484 (1997) (finding that claim for wrongful discharge stated by employee who reported unsafe working conditions to OSHA based on public policy expressed in the federal OHSA statute; claim stated by same employee based on public policy in Ohio's Whistleblower Act if employee strictly complied with Act's requirements; remedies available for violations of Whistleblower Act and for wrongful discharge based on public policy of Whistleblower Act are cumulative, but employee is not entitled to double recovery);
- *Pytlinski v. Brocar Products, Inc.,* 94 Ohio St. 3d 77, 760 N.E.2d 385, 18 IER Cases 487 (2002) (recognizing claim for employee allegedly terminated for workplace safety complaints);
- *Sabo v. Schott,* 70 Ohio St. 3d 527, 639 N.E.2d 783 (1994) (recognizing claim for employee terminated for testifying truthfully);
- *Jenkins v. Parkview Counseling Center Inc.,* 2001 Ohio 3151, 17 IER Cases 484 (Ohio Ct. App. 2001) (employee protected for filing lawsuit over wages);
- *Powers v. Springfield City Schools,* 14 IER Cases 172 (Ohio Ct. App. 1998) (whistleblower may pursue claim based on retaliatory denial of promotion);
- *Bidwell v. Children's Medical Center,* 13 IER Cases 896 (Ohio Ct. App. 1997) (employee protected for reporting co-worker's threats against her);
- *Chapman v. Adia Services, Inc.,* 116 Ohio App. 3d 534, 688 N.E.2d 604, 13 IER Cases 656 (1997) (recognizing claim for employee who consulted attorney about possible lawsuit against employer's customer);
- *Stephenson v. Litton Systems, Inc.,* 97 Ohio App. 3d 125, 646 N.E.2d 259, 10 IER Cases 759 (1994) (determining that employee protected for reporting to police that employer was intending to drive automobile while intoxicated); and
- *Delaney v. Skyline Lodge, Inc.,* 95 Ohio App. 3d 264, 642 N.E.2d 395, 76 FEP Cases 547 (1994) (recognizing claim for employee terminated for complaining about restaurant manager's check-padding), *appeal not allowed,* 70 Ohio St. 3d 1465, 640 N.E.2d 527 (1994).

— *But see Sorensen v. Wise Management Services, Inc.,* 2003 Ohio 767, 19 IER Cases 1161 (Ohio Ct. App. 2003) (not recognizing claim for employee terminated for refusing to perform order that employee was unsure violated Medicaid); *Roberts v. Alan Ritchey, Inc.,* 962 F. Supp. 1028, 12

IER Cases 1449 (S.D. Ohio 1997) (not recognizing claim based on presumption of innocence where employee terminated after arrest for DUI but before acquittal); *Seta v. Reading Rock, Inc.*, 100 Ohio App. 3d 731, 654 N.E.2d 1061 (1995) (not recognizing claim for employee discharged for failing mandatory drug test); *Thomas v. Mastership Corp.*, 108 Ohio App. 3d 91, 670 N.E.2d 265, 12 IER Cases 382 (1995), (determining that employee did not prove casual connection between termination and inquiries to IRS about tax issues), *cause dismissed*, 75 Ohio St. 3d 1415, 661 N.E.2d 762 (1996); and *Contreras v. Ferro Corp.*, 73 Ohio St. 3d 244, 652 N.E.2d 940, 10 IER Cases 1754 (1995) (not recognizing public policy exception for employee who reported illegal inventory diversion because employee's claim would have been based on Ohio's Whistleblower Act and employee had not satisfied the reporting requirements of that Act).

OKLAHOMA

Oklahoma has recognized a limited public policy exception and has extended its protection to whistleblowers under some circumstances.

- *Burk v. K-Mart Corp.*, 770 P.2d 24, 4 IER Cases 182 (Okla. 1989) (responding to a certified question but without reference to a specific fact pattern, that the Oklahoma Supreme Court recognized a limited public policy exception to the employment-at-will doctrine in cases where the discharge was contrary to a clear mandate of public policy);
- *Groce v. Foster*, 1994 OK 88, 880 P.2d 902, 9 IER Cases 1287 (1994) (recognizing claim for employee allegedly terminated for filing lawsuit against employer's customer for work-related injury);
- *Wilson v. Hess-Sweitzer & Brant, Inc.*, 1993 OK 156, 864 P.2d 1279, 9 IER Cases 40 (1993) (recognizing claim for constructive termination where employee was terminated after receiving subpoena in co-workers workers' compensation lawsuit);
- *Todd v. Frank's Tong Service, Inc.*, 1989 OK 121, 784 P.2d 47, 4 IER Cases 1535 (1989) (truck driver protected for refusing to drive allegedly unsafe truck);
- *Bishop v. Federal Intermediate Credit Bank of Wichita*, 908 F.2d 658, 5 IER Cases 870 (10th Cir. 1990) (employee protected for testimony at congressional hearing); and
- *Tyler v. Original Chili Bowl, Inc.*, 934 P.2d 1106 (Okla. Ct. App. 1997) (concluding that claim stated by internal whistleblower who told supervisors about violations of Food, Drug, and Cosmetic Act).

— *But see Barker v. State Insurance Fund*, 2001 OK 94, 40 P.3d 463, 18 IER Cases 1840 (2001) (determining that complaints about personal opinions regarding mismanagement not protected, even though internal complaints implicating pubic policy may be protected); and *Wheless v. Willard Grain & Feed, Inc.*, 1998 OK 84, 964 P.2d 204, 14 IER Cases 275 (1998) (not recognizing public policy exception for employee who falsified

environmental regulatory reports required by state statute because public policy commitment to environmental safety and protection is not advanced by an employee who participates in violating a state statute and keeps silent concerning the violation, even when his motivation is fear of being discharged).

OREGON

Oregon has recognized the public policy exception and extended its protection to whistleblowers in some circumstances.

- *Nees v. Hocks,* 272 Or. 210, 536 P.2d 512, 115 LRRM 4571 (1975) (recognizing claim for employee allegedly discharged for serving on jury);
- *McQuary v. Bel Air Convalescent Home, Inc.,* 69 Or. App. 107, 684 P.2d 21, 120 LRRM 3129 (1984) (finding a nursing supervisor stated a cause of action for wrongful discharge when she asserted that she had been terminated for threatening to report patient abuse to state authorities);
- *Delaney v. Taco Time International, Inc.,* 297 Or. 10, 681 P.2d 114, 1 IER Cases 367 (1984) (recognizing claim for employee terminated for refusing to sign false statement about morals of former employee);
- *McCool v. Hillhaven Corp.,* 97 Or. App. 536, 777 P.2d 1013, 4 IER Cases 1026 (1989) (determining that employee protected for attempting to comply with nursing home regulations; remedy under whistleblower statute not exclusive);
- *Dalby v. Sisters of Providence in Oregon,* 125 Or. App. 149, 865 P.2d 391, 9 IER Cases 56 (1993) (determining that pharmacy employee protected against constructive discharge for objecting to alleged violations of state drug inventory regulations);
- *Anderson v. Evergreen International Airlines, Inc.,* 131 Or. App. 726, 886 P.2d 1068, 10 IER Cases 309 (1994) (recognizing claim for employee terminated for refusing to agree to alleged violations of federal airline regulations);
- *Banaitis v. Mitsubishi Bank, Ltd.,* 129 Or. App. 371, 879 P.2d 1288, 9 IER Cases 1481 (1994) (holding that public policy exception does not require that a specific statute have been violated, and discharge of bank employee for refusing to disclose customer's confidential financial information fell within the societal obligation exception to the at-will employment rule);
- *Howard v. Waremart, Inc.,* 147 Or. App. 135, 935 P.2d 432, 12 IER Cases 1188 (1997) (that employee health and safety complaints protected);
- *Thorson v. State ex rel. Department of Justice,* 171 Or. App. 704, 15 P.3d 1005, 17 IER Cases 90 (2000) (finding that employee protected for refusing to make false allegation of sexual harassment against co-worker); and
- *Dunwoody v. Handskill Corp.,* 185 Or. App. 605, 60 P.3d 1135, 19 IER Cases 825 (2003) (recognizing claim for employee employed pursuant to a contract who was discharged for complying with a subpoena in a criminal trial).

— *But see Babick v. Oregon Arena Corp.,* 333 Or. 401, 40 P.3d 1059, 18 IER Cases 593 (2002) (not recognizing claim for security guards allegedly terminated for lawfully arresting disruptive audience members); *Downs v. Waremart,. Inc.,* 137 Or. App. 119, 903 P.2d 888, 10 IER Cases 1817 (1995) (not allowing claim for employee allegedly terminated for asking for a lawyer during police theft investigation), *aff'd in part, rev'd in part on other grounds,* 324 Or. 307, 926 P.2d 314, 12 IER Cases 324 (1996); *Elliott v. Tektronix, Inc.,* 102 Or. App. 388, 796 P.2d 361 (1990) (not allowing claim for employee who contended employer had breached employment contract); *Patton v. J.C. Penney Co.,* 75 Or. App. 638, 707 P.2d 1256, 120 LRRM 3131 (1985) (not allowing claim for employee allegedly discharged for refusing to end social relationship with co-worker), *aff'd in part, rev'd in part on other grounds,* 301 Or. 117, 719 P.2d 854, 112 LRRM 2445 (1986); *Sieverson v. Allied Stores Corp.,* 97 Or. App. 315, 776 P.2d 38, 4 IER Cases 785 (1989) (holding that employee who claimed she was terminated in retaliation for reporting employee abuse did not state a claim since reporting suspected wrongdoing within a private corporation does not involve interest of public importance); and *Campbell v. Ford Industries, Inc.,* 274 Or. 243, 546 P.2d 141, 115 LRRM 4837 (1976) (not recognizing claim where employee asserted rights as shareholder to view corporate records related to alleged corporate improprieties).

PENNSYLVANIA

Pennsylvania has recognized a public policy exception that extends to whistleblowers in limited circumstances.

- *Rothrock v. Rothrock Motor Sales, Inc.,* 2002 Pa. Super. 303, 810 A.2d 114, 19 IER Cases 214 (2002) (recognizing public policy claim by employee who refused to talk subordinate out of filing for workers' compensation);
- *Shick v. Shirey,* 552 Pa. 590, 716 A.2d 1231, 14 IER Cases 480 (1998) (finding that the termination of an at-will employee for filing a workers' compensation claim is a violation of public policy);
- *Field v. Philadelphia Electric Company,* 388 Pa. Super. 400, 565 A.2d 1170 (1989) (recognizing public policy exception where an employee was discharged because he performed a statutorily imposed duty to report violations involving nuclear materials);
- *Perks v. Firestone Tire & Rubber Co.,* 611 F.2d 1363, 115 LRRM 4592 (3d Cir. 1979) (recognizing claim for employee allegedly discharged for refusing to take lie detector test);
- *Hoopes v. City of Chester,* 473 F. Supp. 1214 (E.D. Pa. 1979) (stating in *dicta* that employee demoted for testifying truthfully in criminal proceeding would have had a public policy claim if employee had pleaded such a claim); and
- *Reuther v. Fowler & Williams, Inc.,* 255 Pa. Super. 28, 386 A.2d 119, 115 LRRM 4690 (1978) (recognizing public policy claim for employee allegedly discharged for serving on jury).

— *But see Spierling v. First American Home Health Services, Inc.,* 1999 Pa. Super. 222, 737 A.2d 1250, 16 IER Cases 308 (1999) (not recognizing public policy claim for employee claiming she was fired for reporting suspected Medicare fraud by her employer); *Holewinski v. Children's Hospital of Pittsburgh,* 437 Pa. Super. 174, 649 A.2d 712 (1994) (no protection for whistleblowing under Pennsylvania public policy doctrine); *Clark v. Modern Group Ltd.,* 9 F.3d 321, 8 IER Cases 1803 (3rd Cir. 1993) (no protection for whistleblowing under Pennsylvania public policy doctrine); *McCartney v. Meadowview Manor, Inc.,* 353 Pa. Super. 34, 508 A.2d 1254 (1986) (not recognizing public policy claim for employee allegedly fired for seeking employment with competitor of employer); and *Geary v. U.S. Steel Corp.,* 456 Pa. 171, 319 A.2d 174, 115 LRRM 4665 (1974) (not recognizing claim for employee allegedly terminated for complaining internally about product safety).

PUERTO RICO

Puerto Rico has recognized an exception to employment at-will for employees fired in violation of constitutional rights, but has not extended this protection to whistleblowers more generally.

- *Arroyo v. Rattan Specialties, Inc.,* 117 D.P.R. 35 (1986) (holding that an employee may not be fired in violation of his constitutional rights);
- *Negron v. Caleb Brett U.S.A., Inc.,* 212 F.3d 666 (1st Cir. 2000) (finding that a chemist was protected by Puerto Rico's *Arroyo* exception to employment at-will because her constitutional right to privacy could be violated if she were required, by her employer, to falsify lab records); and
- *In re El San Juan Hotel Corp.,* 149 B.R. 263 (D.P.R. 1992) (refusing to extend public policy protection to employee allegedly terminated for disclosing illegal acts).

However, the Puerto Rico wrongful discharge statute has been held to be the exclusive remedy for claims for wrongful discharge in violation of public policy. *See Hopgood v. Merrill Lynch Pierce, Fenner & Smith,* 839 F. Supp. 98 (D.P.R. 1993), *aff'd,* 36 F.3d 1089 (1st Cir. 1994); and *Alvarado Morales v. Digital Equipment Corp.,* 669 F. Supp. 1173 (D.P.R. 1987), *aff'd,* 843 F.2d 613 (1st Cir. 1988).

RHODE ISLAND

Rhode Island has indicated a willingness to apply the public policy exception in certain cases, but has not clearly extended protection to whistleblowers.

- *Volino v. General Dynamics,* 539 A.2d 531, 3 IER Cases 306 (R.I. 1988) (indicating that public policy cause of action might be recognized to protect whistleblower, but finding that absenteeism was true reason for termination); and

- *Cummins v. EG & G Sealol, Inc.*, 690 F. Supp. 134, 3 IER Cases 705 (D.R.I. 1988) (interpreting *Volino*, public policy claim recognized when employee is discharged for exposing employer conduct that is contrary to statutorily enacted public policy).

— *But see Dudzik v. Leesona Corp.*, 473 A.2d 762, 120 LRRM 3452 (R.I. 1984) (employee who complained of an improper assignment had no cause of action because the employment was at-will).

SOUTH CAROLINA

South Carolina has recognized a limited public policy exception that extends to some forms of whistleblowing.

- *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213, 1 IER Cases 1099 (S.C. 1985) (recognizing claim for an employee allegedly discharged for obeying subpoena to attend state administrative hearing);
- *Culler v. Blue Ridge Electric Co-op., Inc.*, 309 S.C. 243, 422 S.E.2d 91, 15 IER Cases 238 (S.C. 1992) (determining that employee would have been protected if employee had proved termination for refusing to make political contributions);
- *Garner v. Morrison Knudsen Corp.*, 318 S.C. 223, 456 S.E.2d 907, 10 IER Cases 819 (S.C. 1995) (recognizing public policy in favor of employee who voluntarily testified about conditions in nuclear plant); and
- *Stiles v. American General Life Ins. Co.*, 335 S.C. 222, 516 S.E.2d 449, 15 IER Cases 238 (S.C. 1999) (holding that at-will employee with contract specifying 30-day notice provision for termination may maintain public policy cause of action).

— *But see Lawson v. South Carolina Department of* Corrections, 340 S.C. 346, 532 S.E.2d 259 (S.C. 2000) (refusing to extend public policy protection to individual who reported irregularities in company hiring process to managers); *Miller v. Fairfield Communities, Inc.*, 299 S.C. 23, 382 S.E.2d 16, 4 IER Cases 997 (S.C. Ct. App. 1989) (not recognizing claim for employee allegedly terminated for refusing to have spouse resign employment with competitor), *cert. dismissed*, 302 S.C. 518, 397 S.E.2d 377 (1990); *Merck v. Advanced Drainage Systems, Inc.*, 921 F.2d 549, 6 IER Cases 102 (4th Cir. 1990) (finding no claim for employee who refused to certify that pipe satisfied industry standards); and *Smalley v. Fast Fare Inc.*, 4 IER Cases 105 (D.S.C. 1988) (not recognizing public policy claim recognized for employee who was allegedly discharged for informing superior of discrepancies in cash inventory because it concerned an internal matter and was not clearly violative of public policy).

SOUTH DAKOTA

South Dakota has recognized a public policy exception (as a contractual theory, not as a tort theory) that protects whistleblowers in some circumstances.

- *Dahl v. Combined Insurance Co.,* 2001 SD 12, 621 N.W.2d 163, 17 IER Cases 389 (2001) (whistleblowing for the public good, such as reporting missing insurance premiums, is protected under the public policy exception);
- *Lau v. Behr Heat Transfer System Inc.*, 150 F. Supp. 2d 1017 (D.S.D. 2001) (stating public policy exception would cover an employee who was allegedly fired for requesting FMLA leave); and
- *Johnson v. Kreiser's Inc.,* 433 N.W.2d 225, 3 IER Cases 1767 (S.D. 1988) (applying public policy exception to employee who refused to aid employer in illegal conversion of corporate property to his own personal use; cause of action sounds in contract, not tort).

— *But see Peterson v. Glory House of Sioux Falls,* 443 N.W.2d 653, 4 IER Cases 912 (S.D. 1989) (not recognizing claim for employee allegedly terminated for warning resident of halfway house about potential sexual harassment by another resident).

TENNESSEE

Tennessee has recognized a limited public policy exception that protects whistleblowers in some circumstances.

- *Chism v. Mid-South Milling Co., Inc.,* 762 S.W.2d 552, 3 IER Cases 1846 (Tenn. 1988) (tracing the development of Tennessee's exception to the employment at-will doctrine where the employer violates a clear public policy);
- *Guy v. Mutual of Omaha Insurance Co.,* 79 S.W.3d 528, 18 IER Cases 1459 (Tenn. 2002) (holding that public policy protects employees who report fraudulent activity by insurance agents; claim not preempted by Tennessee whistleblower statute);
- *Crews v. Buckman Laboratories International Inc.,* 78 S.W.3d 852, 18 IER Cases 1246 (Tenn. 2002) (in-house counsel protected for reporting general counsel's lack of Tennessee license to practice law);
- *Reynolds v. Ozark Motor Lines, Inc.,* 887 S.W.2d 822, 10 IER Cases 100 (Tenn. 1994) (truck driver protected for refusing to violate state laws on safety);
- *Moskal v. First Tennessee Bank,* 815 S.W.2d 509, 6 IER Cases 1080 (Tenn. Ct. App. 1991) (employee protected for reporting banking irregularities); and
- *Clanton v. Cain-Sloan Co.,* 677 S.W.2d 441, 117 LRRM 2789 (Tenn. 1984) (recognizing claim for employee who filed for workers' compensation benefits).

— *But see Moore v. Averitt Express, Inc.,* 19 IER Cases 303 (Tenn. Ct. App. 2002) (refusing to extend public policy exception to situation where an employee was allegedly fired for whistleblowing statements he made before his employment commenced); *Deiters v. Home Depot U.S.A., Inc.,* 842 F. Supp. 1023, 9 IER Cases 923 (M.D. Tenn. 1993) (no cause of action for employee terminated for filing suit against employer); and *Bloom v.*

General Electric Supply Co., 702 F. Supp. 1364, 3 IER Cases 1842 (M.D. Tenn. 1988) (finding that employee who alleged she was discharged after her husband began work for competitor of employer failed to state a claim under the public policy exception because no public policy was evidenced by constitutional or statutory provision).

TEXAS

Texas has recognized a narrow public policy exception that protects only passive whistleblowers who refuse to engage in criminal activity.

- *Sabine Pilot Service, Inc. v. Hauck,* 687 S.W.2d 733, 119 LRRM 2187 (Tex. 1985) (recognizing claim for sailor allegedly dismissed for refusing to pump bilges of ship in waters where law prohibited such pumping);
- *Johnston v. Del Mar Distributing Co., Inc.*, 776 S.W.2d 768 (Tex. App. 1989) (recognizing public policy claim for employee who inquired with the federal authorities concerning legality of shipment of firearms by employer);
- *Higginbotham v. Allwaste, Inc.*, 889 S.W.2d 411 (Tex. App. 1994) (recognizing claim for employee allegedly terminated for refusing to prepare inaccurate documents to submit to internal auditor who would then use them to file statements with the SEC); and
- *Morales v. SimuFlite Training International, Inc.*, 132 S.W.3d 603, 21 IER Cases 379 (Tex. App. 2004) (recognizing claim for employee allegedly terminated for refusing to violate federal aviation regulations).

— *But see Mayfield v. Lockheed Engineering & Sciences Co.*, 970 S.W.2d 185 (Tex. App. 1998) (refusing to extend *Sabine Pilot* to protect individuals reporting potentially illegal activity to higher management); *Wornick Co. v. Casas,* 856 S.W.2d 732, 8 IER Cases 1058 (Tex. 1993) (no claim for employee allegedly terminated because of knowledge that employer had committed crime); *Austin v. HealthTrust, Inc.-The Hosp. Co.*, 967 S.W.2d 400, 13 IER Cases 1707 (Tex. 1998) (finding no protection for employees who report unlawful workplace conduct); *Thompson v. El Centro Del Barrio,* 905 S.W.2d 356 (Tex. App. 1995) (public policy doctrine does not extend to whistleblowing); *Hancock v. Express One International, Inc.*, 800 S.W.2d 634 (Tex. App. 1990) (finding no protection for employee who refused to violate statute containing only civil penalties, but no criminal penalties); *Guthrie v. Tifco Industries,* 941 F.2d 374, 7 IER Cases 284 (5th Cir. 1991) (not recognizing claim for employee allegedly terminated for refusing to violate noncriminal customs regulations); and *Winters v. Houston Chronicle Publishing Co.*, 795 S.W.2d 723, 5 IER Cases 1185 (Tex. 1989) (refusing to extend *Sabine Pilot* exception to employee who was allegedly fired for reporting co-workers' illegal activity to employer).

UTAH

Utah has recognized a narrow public policy exception that extends to some types of whistleblowing.

- *Hodges v. Gibson Products Co.*, 811 P.2d 151 (Utah 1991) (recognizing claim for employee terminated based on knowingly false theft allegation);
- *Peterson v. Browning,* 832 P.2d 1280, 7 IER Cases 801 (Utah 1992) (affording public policy protection to employee who was allegedly asked to falsify tax records contrary to Missouri tax laws; Utah public policy could be found in law of another state or federal law);
- *Heslop v. Bank of Utah,* 839 P.2d 828, 7 IER Cases 1279 (Utah 1992) (determining that employee protected for internal complaints about violations of state banking law).

— *But see Rackley v. Fairview Care Centers, Inc.,* 2001 UT 32, 23 P.3d 1022, 17 IER Cases 895 (Utah 2001) (stating that public policy did not require nursing home employees to notify residents of arrival of funds; administrative regulations not a sufficient basis for public policy claim); and *Fox v. MCI Communications Corp.,* 931 P.2d 857, 12 IER Cases 769 (Utah 1997) (finding no public policy protection for employee who reported co-workers' allegedly criminal conduct to employer where no significant public harm might have resulted).

VERMONT

Vermont has recognized a limited public policy exception.

- *Payne v. Rozendaal,* 147 Vt. 488, 520 A.2d 586, 1 IER Cases 800 (1986) (discharge solely on basis of age is contrary to public policy).

— *But see Dulude v. Fletcher Allen Health Care, Inc.,* 174 Vt. 74, 807 A.2d 390, 18 IER Cases 1724 (2002) (refusing to find a violation of public policy where a nurse was terminated for allegedly improper medicating practices, even if the practices were in fact proper); and *Madden v. Omega Optical Inc.,* 165 Vt. 306, 683 A.2d 386, 11 IER Cases 1606 (1996) (finding no public policy claim for employee allegedly terminated for refusing to sign an unenforceable noncompetition agreement).

VIRGIN ISLANDS

The courts for the Virgin Islands have recognized a limited public policy exception that has not yet been extended to whistleblowing.

- *Claytor v. Chenay Bay Beach Resort,* 79 F. Supp. 2d 577, 15 IER Cases 1568 (D.V.I. 2000) (not allowing public policy claim based on policy expressed in Virgin Islands Wrongful Discharge Act);

- *Moore v. A.H. Riise Gift Shops,* 659 F. Supp. 1417, 2 IER Cases 157 (D.V.I. 1987) (recognizing claim where public policy based on statute requiring employers to rehire disabled employees); and
- *Robinson v. Hess Oil Virgin Islands Corp.,* 19 V.I. 106 (D.V.I. 1982) (recognizing claim for employee discharged based on the results of a negligently conducted polygraph test).

VIRGINIA

Virginia has recognized a narrow public policy exception.

- *Bowman v. State Bank of Keysville,* 229 Va. 534, 331 S.E.2d 797, 1 IER Cases 437 (1985) (recognizing claim for employees allegedly dismissed for exercising statutory rights as shareholders of employer); and
- *Anderson v. ITT Industries Corp.,* 92 F. Supp. 2d 516, 16 IER Cases 494 (E.D. Va. 2000) (recognizing claim for employee allegedly terminated for refusing to falsify resumes in connection with bid for government contract).

— However, the Virginia Supreme Court has not recognized a "generalized, common-law 'whistleblower' retaliatory discharge type claim." *Dray v. New Market Poultry Products, Inc.,* 258 Va. 187, 191, 518 S.E.2d 312, 15 IER Cases 938 (1999) (no claim recognized for poultry worker allegedly terminated for complaining about unsanitary conditions contrary to state sanitation laws). In order to have a viable wrongful termination claim the plaintiff must invoke a specific statute conferring rights or duties upon plaintiff. According to the Virginia Supreme Court, there are only three circumstances where it has concluded that the claims were sufficient to constitute a common law action for wrongful discharge under the public policy exception: (1) where an employer violated a policy enabling the exercise of an employee's statutorily created right; (2) when the public policy violated by the employer was explicitly expressed in the statute and the employee was clearly a member of that class of persons directly entitled to protection enunciated by the public policy; and (3) where the discharge was based on the employees refusal to engage in a criminal act. *Rowan v. Tractor Supply Co.,* 263 Va. 209, 559 S.E.2d 709, 18 IER Cases 788 (2002) (not allowing claim based on policy against obstruction of justice, where employee was allegedly terminated for refusing to abandon criminal assault charge against co-worker); *Lawrence Chrysler Plymouth Corp. v. Brooks,* 251 Va. 94, 465 S.E.2d 806, 11 IER Cases 523 (1996) (not recognizing claim for employee allegedly terminated for refusing to repair automobile in unsafe manner).

WASHINGTON

Washington has recognized a public policy exception that has been extended to protect whistleblowers in certain cases.

- *Hubbard v. Spokane County,* 146 Wash. 2d 699, 50 P.3d 602, 18 IER Cases 1564 (2002) (finding that public policy exception prohibits firing an employee for arguing with his employer about the legality of granting a building permit);
- *Ellis v. City of Seattle,* 142 Wash. 2d 450, 13 P.3d 1065, 17 IER Cases 1 (2000) (extending public policy protection to employee who refused to disable a fire alarm system because he reasonably believed it would be illegal to do so);
- *Gardner v. Loomis Armored, Inc.,* 128 Wash. 2d 931, 913 P.2d 377, 11 IER Cases 993 (1996) (finding that an employee who violated company policy intended to protect employees' lives by leaving his armored truck and aiding a woman during a bank robbery was protected by the public policy exception, according to four-prong test); and
- *Thompson v. St. Regis Paper Co.,* 102 Wash. 2d 219, 685 P.2d 1081, 1 IER Cases 392 (1984) (recognizing claim for employee allegedly dismissed for attempting to ensure compliance with the Foreign Corrupt Practices Act).

— *But see Awana v. Port of Seattle,* 89 P.3d 291 (Wash. Ct. App. 2004) (not recognizing claim for employees of contractor to Port of Seattle, where employees attempted to sue Port of Seattle directly even though employees not employed by Port of Seattle); *Vargas v. State,* 116 Wash. App. 30, 65 P.3d 330 (2003) (refusing to recognize wrongful termination claim for individual allegedly fired from state agency for selling drugs from his home, as there is no clear public policy against terminating individual for acts during nonwork hours); *Sedlacek v. Hillis,* 145 Wash. 2d 379, 18 IER Cases 425 (2001) (no claim for associating with disabled person); and *Farnam v. CRISTA Ministries,* 116 Wash. 2d 659, 807 P.2d 830 (1991) (not recognizing claim where nurse's report of lawful removal of terminally ill patient's feeding tube was based on personal ethics).

WEST VIRGINIA

West Virginia has recognized the public policy exception, and in some cases has extended protection to whistleblowers.

- *Tiernan v. Charleston Area Medical Center, Inc.,* 212 W. Va. 859, 575 S.E.2d 618 (2002) (recognizing public policy protection for employee statements about unsafe nursing practices of employer medical center);
- *Kanagy v. Fiesta Salons, Inc.,* 208 W. Va. 526, 541 S.E.2d 616, 17 IER Cases 345 (2000) (holding that public policy exception protects employee providing true information about her supervisor's unlicensed practice of cosmetology to state officials);
- *Lilly v. Overnight Transportation Co.,* 188 W. Va. 538, 425 S.E.2d 214, 8 IER Cases 267 (1992) (recognizing claim for driver who refused to operate vehicle with unsafe brakes);

- *Page v. Columbia Natural Resources, Inc.*, 198 W. Va. 378, 480 S.E.2d 817, 13 IER Cases 944 (1996) (employee protected for testifying in legal proceeding);
- *McClung v. Marion County Commission*, 178 W. Va. 444, 360 S.E.2d 221 (1987) (recognizing claim for employee who sued for overtime wages);
- *Wiggins v. Eastern Associated Coal Corp.*, 178 W. Va. 63, 357 S.E.2d 745 (1987) (allowing claim by mine foreman allegedly fired for refusing to operate mine under unsafe conditions);
- *Harless v. First National Bank in Fairmont*, 162 W. Va. 116, 246 S.E.2d 270, 115 LRRM 4380 (1978) (recognizing claim for employee allegedly dismissed for voicing concerns over violation of consumer credit laws); and
- *Collins v. Elkay Mining Co.*, 371 S.E.2d 46, 3 IER Cases 801 (W. Va. 1988) (recognizing public policy claim for employee who refused to falsify safety reports).

— *But see Birthisel v. Tri-Cities Health Services Corp.*, 188 W. Va. 371, 424 S.E.2d 606, 8 IER Cases 199 (1992) (finding that no clear public policy supports a claim of wrongful termination by a social worker allegedly fired for refusing to review patient charts on ethical grounds).

WISCONSIN

Wisconsin has recognized a public policy exception (as a contractual theory, not a tort theory) that has been extended to protect whistleblowers under some circumstances.

- *Strozinsky v. School District of Brown Deer*, 2000 WI 97, 237 Wis. 2d 19, 614 N.W.2d 443, 16 IER Cases 879 (Wis. 2000) (finding public policy exception where employee was allegedly terminated for attempting to comply with tax laws by making deductions from compensation checks) (citing *Brockmeyer v. Dun & Bradstreet*, 113 Wis. 2d 561, 335 N.W.2d 834, 115 LRRM 4484 (Wis. 1983) (public policy claim sounds in contract, not in tort));
- *Hausman v. St. Croix Care Center*, 214 Wis. 2d 655, 571 N.W.2d 393, 13 IER Cases 995 (Wis. 1997) (refusing to find general whistleblower exception, but finding that public policy protects nursing home employees who report abuse or neglect as required by statute);
- *Kempfer v. Automated Finishing, Inc.*, 211 Wis. 2d 100, 564 N.W.2d 692, 12 IER Cases 1686 (Wis. 1997) (upholding claim for employee terminated for refusing to drive truck because he did not have valid commercial driver's license);
- *Wilcox v. Niagara of Wisconsin Paper Corp.*, 965 F.2d 355, 7 IER Cases 812 (7th Cir. 1992) (recognizing claim for employee who refused to work Saturday and Sunday when employee worked late previous two days);
- *Winkelman v. Beloit Memorial Hospital*, 168 Wis. 2d 12, 483 N.W.2d 211, 7 IER Cases 686 (Wis. 1992) (finding that nurse protected for refusing to work in hospital unit in which she was unqualified to work); and

- *Wandry v. Bull's Eye Credit Union,* 129 Wis. 2d 37, 384 N.W.2d 325 (Wis. 1986) (finding employee protected for refusing to reimburse employer's loss on forged check that employee's supervisor approved).

— *But see Bammert v. Don's Super Valu, Inc.,* 2002 WI 85, 254 Wis. 3d 347, 646 N.W.2d 365, 18 IER Cases 1480 (Wis. 2002) (refusing to extend public policy exception to employee who was allegedly fired because of her husband's participation in arrest of her boss's wife); *Batteries Plus, LLC v. Mohr,* 244 Wis. 2d 559, 628 N.W.2d 364, 17 IER Cases 1269 (Wis. 2001) (not recognizing claim for employee who refused to repay alleged overpayment of expense reimbursement); *Bushko v. Miller Brewing Co.,* 134 Wis. 2d 136, 396 N.W.2d 167 (Wis. 1986) (finding that employee who complained about policies regarding plant safety, hazardous waste did not state a cause of action); and *Ward v. Frito-Lay, Inc.,* 95 Wis. 2d 372, 290 N.W.2d 536, 115 LRRM 4320 (Wis. Ct. App. 1980) (recognizing public policy exception in *dicta;* however, no claim was stated by employee who was discharged for relationship with co-worker).

WYOMING

Wyoming has adopted a public policy exception limited to employees filing workers' compensation claims.

- *McLean v. Hyland Enterprises, Inc.,* 2001 WY 111, 34 P.3d 1262, 19 IER Cases 183 (2001) (citing *Griess v. Consolidated Freightways Corp. of Delaware,* 776 P.2d 752, 4 IER Cases 839 (Wyo. 1989) (public policy claim is recognized for employees who file workers' compensation claims)) (refusing to extend public policy exception to protect individuals who complained about allegedly unsafe working conditions because they had a potential administrative remedy).

— *But see Horne v. J.W. Gibson Well Service Co.,* 894 F.2d 1194, 5 IER Cases 69 (10th Cir. 1990) (recognizing limited public policy exception in *Griess, supra;* declining to apply that exception to employee who refused to submit to a drug test because employers' attempts to ensure a safe workplace did not violate the public policy of Wyoming); *Nelson v. Crimson Enterprises, Inc.,* 777 P.2d 73, 4 IER Cases 914 (Wyo. 1989) (no claim recognized for whistleblowing); and *Allen v. Safeway Stores, Inc.,* 699 P.2d 277, 120 LRRM 2987 (Wyo. 1985) (not recognizing public policy tort claim for employee allegedly discharged due to discrimination because separate remedies existed).